GAHC010207952026

2026:GAU-AS:15137

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

Case No. : WP(C)/5204/2026

AYESHA BEGUM
W/O ASHUK UDIN TAPADAR, R/O - VILLAGE CHOURORGOOL, P.O ANGLARBAZAAR, DISTRICT SRIBHUMI, ASSAM, PIN - 788701.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM, PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT, DISPUR, GUWAHATI, PIN - 781006.

2:THE COMMISSIONER
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
ASSAM
JURIPAR
PANJABARI
GUWAHATI
PIN - 781022.

3:THE DISTRICT COMMISSIONER
SRIBHUMI
DEPUTY COMMISSIONER OFFICE ROAD
MAIN ROAD
SRIBHUMI
ASSAM
PIN788710.

4:THE CHIEF EXECUTIVE OFFICER
OFFICE OF THE ZILLA PARISHAD
SRIBHUMI
BESIDE DC OFFICE
KARIMGANJ

P.O. KARIMGANJ
ASSAM
PIN 788710

5:THE BLOCK DEVELOPMENT OFFICER
BADARPUR CHAITANYANAGAR DEVELOPMENT BLOCK
P.O MAHAKAL
DISTRICT SRIBHUMI
ASSAM
PIN 788706

6:SURJANA BEGUM TAPADAR
W/O - MUJIBUR RAHMAN LASKAR
R/O VILLAGE - HARINADIK
P.O ANGLAR BAZAR
P.S BADARPUR
DISTRICT - SRIBHUMI
ASSAM
PIN - 788806

Linked Case : WP(C)/5253/2025

AYESHA BEGUM
W/O ASHUK UDIN TAPADAR
R/O CHOURORGOOL
P.O- ANGLARBAZAAR
DISTRICT- SRIBHUMI
ASSAM
PRESENTLY
THE PRESIDENT OF UMARPUR GAON PANCHAYAT
SRIBHUMI.

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REPRESENTED BY THE PRINCIPAL SECRETARY
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
GOVERNMENT OF ASSAM
DISPUR
GUWAHATI-6.

2:THE COMMISSIONER
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
JURIPAR
PANJABARI

GUWAHATI-22

3:THE DISTRICT COMMISSIONER
SRIBHUMI
ASSAM

4:THE BLOCK DEVELOPMENT OFFICER
BADARPUR CHAITAYNANAGAR DEVELOPMENT BLOCK
P.O MAHAKAL
PIN- 788701
SRIBHUMI
ASSAM

5:THE AUTHORIZED OFFICER
IN RESPECT OF THE ELECTION OF THE PRESIDENT OF UMARPUR GAON PANCHAYAT IN ITS FIRST MEETING HELD ON 03.07.2025

6:SURJANA BEGUM TAPADAR
WIFE OF MUJIBUR RAHMAN LASKAR
RESIDENT VILLAGE - HARINADIK
P.O ANGLAR BAZAR
P.S BADARPUR
DISTRICT- SRIBHUMI
ASSAM
PIN-788806.

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Advocate for the petitioner (s) : Mr. K. N. Choudhury,
Sr. Advocate
Mr. S. K. Talukdar, Advocate

Advocate for the respondent (s): Mrs. M. Hazarika,
Sr. Advocate
Mr. J. I. Borbhuiya, Advocate
Mr. S. Dutta,
SC, P&RD Deptt.

Date on which judgment is reserved : NA

Date of pronouncement of judgment : 06.10.2026

Whether the pronouncement is of the
Operative part of the judgment? : Yes

Whether the full judgment has been
Pronounced? : Yes

JUDGMENT AND ORDER (ORAL)

Heard Mr. K. N. Choudhury, the learned Senior Counsel assisted by Mr. S. K. Talukdar, the learned counsel appearing on behalf of the Petitioner in both the writ petitions. Mr. S. Dutta, the learned Standing Counsel appears, on behalf of the Panchayat and Rural Development Department of the Government of Assam and Mrs. M. Hazarika, the learned Senior Counsel assisted by Mr. J. I. Borbhuiya, the learned counsel appears, on behalf of the Respondent No.6 in both the writ petitions.

2. Both the writ petitions being interconnected are taken up for disposal by this common judgment and order.

BRIEF FACTS OF THE CASE

3. Shorn of unnecessary details, ten ward members were elected to the Umarpur Gaon Panchayat pursuant to the Panchayat Elections, 2025. The first meeting of the Umarpur Gaon Panchayat was held on 03.07.2025. The Petitioner and the private Respondent who is common in both the writ petitions

contested for the post of the President. From the materials on record, it transpires that there was no dispute as to who voted for whom in so far as nine ballot papers were concerned. But in one ballot paper, the vote mark was placed almost in the middle of both the candidates. This aspect is apparent from a perusal of Page No.31 of WP(C) No.5253/2025.

4. The Respondent No.6 admittedly secured five votes. The Respondent No.6 on 03.07.2025 also did not dispute the ballot paper where the vote mark was put almost in the middle between the Petitioner and the Respondent No.6 and the said vote was counted as a vote for the Petitioner. Resultantly, both the Petitioner and Respondent No.6 had five equal votes. At this stage, it is pertinent to take note of Rule 46(8) of the Assam Panchayat (Constitution) Rules, 1995 (for short, 'the Rules of 1995') and the same is reproduced herein under:-

> "*46 (8) After completion of counting and recording of votes received by each candidate, the Officer authorised under sub-rule (1), shall declare the candidate who has secured the highest number of votes to be duly elected as the President and Vice-President of the Gaon Panchayat. In case of equality of votes between two or more candidates, declaration of election shall be given by the said Officer in the manner prescribed under Rule 45 of these rules.*"

5. From a perusal of the above quoted Sub-Rule (8) of Rule 46

of the Rules of 1995, it would transpire that a candidate who has secured the highest number of votes against the respective office shall be duly elected as the President or the Vice-President of the Gaon Panchayat concerned. In the case of equality of votes between two or more candidates, the declaration of the election shall be given by the said Officer in the manner prescribed under Rule 45 of the Rules of 1995. Taking into account the relevance of Rule 45 of the Rules of 1995, the said Rule is also reproduced herein under:-

> "*45. Equality of Votes. - (1) If after the counting of votes it appears that two candidates of whom only one is to be declared elected, having received equal number of votes, the Deputy Commissioner or the Sub-Divisional Officer as the case may be, or any Officer authorised by him in this behalf, shall decide which of the two shall be declared elected by tossing up a coin in presence of such candidates. Each candidate shall be, assigned one side of the coin by him or by the Officer just before the toss. The candidate whose side appears visible at the top of the coin after it has fallen flat on any plain ground or table, shall be declared elected.*
>
> *(2) If after counting the votes it appears that more than two candidates have received equal number of votes, the Deputy Commissioner or the Sub-Divisional Officer as the case may be, or any Officer authorised by him, shall cause a draw lot in presence of the candidates or their Agents in the following manner*

(i) the names of the candidates having equal number of votes shall be written in separate pieces of paper of the same size and those pieces of paper shall be rolled into separate balls and placed together in a bag. Separate pieces of blank paper of the same size corresponding to the number of pieces placed in the bag, shall be rolled in separate balls and placed together in the same bag, and the bag shall be well shaken. The Deputy Commissioner or the Sub-Divisional Officer as the case may be, or the Officer authorized by him, shall then brings out one paper ball from the bag and open the same. If it is blank, it shall be thrown away and the process shall be continued till the name of a candidate appears in paper ball. The candidate whose name so appears first, shall be declared elected."

6. From a perusal of the above quoted Rule 45 (1) of the Rules of 1995, it would be seen that if after counting of votes, it appears that two candidates of whom only one is to be declared elected, have received equal number of votes, the District Commissioner or the Sub-divisional Officer, as the may be, or any Officer authorized by him shall decide which of the two shall be declared elected by tossing up a coin in presence of such candidates. While carrying out the said tossing of the coin, each candidate shall be assigned one side of the coin just before the toss and the candidate whose side appears visible at the top of

the coin after it has fallen flat on any plain ground or table shall be declared elected.

Sub-Rule (2) of Rule 45 of the Rules of 1995 has no relevance in the present proceedings, as such, is not specifically dealt with.

7. Taking into account that both the Petitioner and the Respondent No.6 had agreed to go for the tossing of the coin as envisaged under Rule 45(1) of the Rules of 1995 which aspect would be apparent from a perusal of Annexure-3 to the writ petition being WP(C) No.5253/2025, the toss was held whereby the Petitioner chose the heads whereas the Respondent No.6 chose the tails.

8. The toss resulted in the Petitioner being elected as the President of Umarpur Gaon Panchayat as per the procedure stipulated in Rule 45(1) of the Rules of 1995.

9. The records further reveal that on 04.07.2025, a representation was submitted by the Respondent No.6 countersigned by four other ward members wherein the ballot paper which had the vote mark almost in the middle of both the candidates was put to challenge, and consequently, the toss of coin which was conducted in terms with Rule 45(1) of the Rules of 1995 was also put to challenge.

10. The said challenge which was made by way of a representation without specifically referring to Section 11 of the Assam Panchayat Act 1994 (for short, 'the Act of 1994'). At this stage, it may not be out of place to mention that neither the Act of 1994 nor the Rules of 1995 stipulate any format for filing an election petition or for that matter a limitation for filing an Appeal. Section 11 of the Act of 1994 is reproduced herein under:-

> "*11. Any dispute relating to the validity of the election of the President and the Vice-President of the Gaon Panchayat under this Act shall be decided by the Deputy Commissioner.*"

11. It is relevant at this stage to observe that Section 11 of the Act of 1994 is not an appellate provision, rather, it is a provision wherein a dispute pertaining to the validity of any election of the President and Vice-President of the Gaon Panchayat is to be decided in the first instance. This aspect would be relevant as would appear in the later part of the present judgment.

12. The District Commissioner, Sribhumi however did not take any steps pursuant to the representation dated 04.07.2025. The Respondent No.6 being aggrieved approached this Court by filing a writ petition which was registered and numbered as WP(C) No.3922/2025. In the said proceedings, the Petitioner herein was arrayed as the Respondent No.8.

13. It is of importance to take note that the learned Coordinate Bench of this Court vide the order dated 21.07.2025 took into consideration Section 11 of the Act of 1994 and observed that the jurisdictional District Commissioner is the authority to decide a dispute relating to the validity of the election of the President and the Vice-President of the Gaon Panchayat. The counsel who represented the Respondent No.6 herein in the said proceedings prayed before the learned Coordinate Bench of this Court that a direction may be issued to the District Commissioner, Sribhumi to consider the representation submitted by the Respondent No.6 herein. The learned counsel who appeared on behalf of the Petitioner herein (the Respondent No.8 in the said proceedings) also did not dispute the said prayer made by the learned counsel for the Respondent No.6 herein (the Petitioner in the said proceedings). On the basis of consensus reached, a consent order was passed by the learned Coordinate Bench directing the jurisdictional District Commissioner to pass a speaking order on the representation submitted by the Respondent No.6 herein (the Petitioner in the said proceedings) and communicate the same to the concerned parties, i.e. the Petitioner and the Respondent No.6 herein. The parties were granted the liberty to file additional pleadings, if so desired. The learned Coordinate Bench also directed that the said exercise be completed within a period

of 45 days from the receipt of the certified copy of the said order dated 21.07.2025. Taking into account the relevance of the said directions to the present dispute, Paragraph Nos.8 to 15 of the said order dated 21.07.2025 are reproduced herein under:-

> "*8. The Assam Panchayat Act, 1994, in Section 11 thereof has mandated that in the event of any dispute relating to the validity of the election of the President and the Vice President of the Gaon Panchayat, the same shall be decided by the District Commissioner. Provisions of Section 11 of the Assam Panchayat Act of 1994, being relevant is extracted hereinbelow :*
>
> > "*11. Any dispute relating to the validity of the election of the President and the Vice-President of the Gaon Panchayat under this Act shall be decided by the Deputy Commissioner.*"
>
> *9. A perusal of the provisions of Section 11, would go to reveal that any dispute relating to the validity of election of the President and Vice-President of the Gaon Panchayat, under this Act, shall be decided by the Jurisdictional District Commissioner. The petitioner, herein, has already approached the District Commissioner, Sribhumi District, by way of filing a representation dated 04.07.2025, raising a grievance with regard to the manner in which the Respondent No.8 was so elected as President of the Goan Panchayat. However, it is submitted by the learned counsel for the petitioner that the said representation has not be given its due consideration.*
>
> ***10. Accordingly, Mr. J. I. Borbhuiya, learned counsel, has prayed that a direction be issued to the District Commissioner, Sribhumi District to***

consider the representation submitted by the petitioner on 04.07.2025.

11. Mr. S. K. Talukdar, learned counsel, has also not disputed the said prayer made by the petitioner.

12. In view of the above consensus reached by the learned counsel for the parties, this Court is of the considered view that the dispute raised by the petitioner pertaining to the election of the Respondent No.8, is to be considered at the first instance by the jurisdictional District Commissioner. Accordingly, the petitioner is directed to furnish a certified copy of this order along with further pleadings he desires to bring on record before the jurisdictional District Commissioner, within a period of 10(ten) days from today. The jurisdictional District Commissioner, on receipt of the certified copy of this order along with additional pleadings that may be brought on record by the petitioner, shall fix a date for hearing and shall issue notices thereon to the petitioner, Respondent No.8 and any other stakeholder involved in the matter. Upon hearing the parties to the proceedings and also appreciating the evidences brought on record by the parties, the jurisdictional District Commissioner, Sribhumi, shall proceed to pass a speaking orders determining the grievance raised by the petitioner in her representations dated 04.07.2025 and communicate the same to all concerned.

13. The Respondent No.8 and other stakeholders are granted liberty to bring on record their respective pleadings on or before the date of hearing scheduled in the matter by the jurisdictional District Commissioner, Sribhumi.

14. The exercise now required to be carried out in the matter for compliance of the directions passed hereinabove by the jurisdictional District Commissioner, Sribhumi, shall be so initiated and concluded within a period of 45(forty five) days from the date of receipt of a certified copy of this order.

15. With the above observation and directions, writ petition stands disposed of."

14. The records further reveal that both the parties filed their additional pleadings before the District Commissioner, Sribhumi. In the objection so filed by the Petitioner on 22.08.2025, questions were raised as regards the finality attained in respect to the declaration of result made by an officer under Rule 46(8) of the Rules of 1995 and that the Respondent No.6 herein was not entitled to any relief under Section 11 of the Act of 1994. A further perusal of the said objection dated 22.08.2025 filed by the Petitioner before the District Commissioner, Sribhumi though did not challenge the maintainability of the proceedings under Section 11 of the Act of 1994, but rather contested the entertainability of the said proceedings in view of the finality attached to the results by virtue of Rule 46(8) read with Rule 46(9) of the Rules of 1995.

15. The District Commissioner thereupon passed the impugned order dated 27.08.2025 whereby he rejected the ballot paper

which contained the vote mark almost in the middle between the names of the Petitioner and the Respondent No.6, and thereupon, came to an opinion that as the Respondent No.6 had secured five votes and the Petitioner had secured four votes and one ballot paper was rejected and accordingly declared the Respondent No.6 to be the President of the Umarpur Gaon Panchayat. This order dated 27.08.2025 is the subject matter of challenge in WP(C) No.5253/2025.

16. The learned Coordinate Bench of this Court vide an order dated 05.09.2025 while issuing notice and also taking into consideration the submission made by the learned counsel appearing on behalf of the Respondent No.6 that pursuant to the passing of the impugned order dated 27.08.2025, the charge was handed over to the Respondent No.6, directed the parties to maintain status quo. The status quo direction is of relevance in as much as the same became the basis of the proceedings in WP(C) No.5204/2026. It is also of importance to note that the order dated 27.08.2025 was not stayed.

17. Pleadings were exchanged. The interim order dated 05.09.2025 was extended by this Court from time to time on various dates. This aspect would be apparent from a perusal of the orders dated 10.06.2026, 17.07.2026 and 19.08.2026. Be that as it may, when the WP(C) No.5253/2025 was taken up on

26.08.2026, this Court did not extend the interim order. It is noted that vide order dated 19.08.2026 it was clearly mentioned that the interim order passed on 05.09.2025 shall continue till 26.08.2026. The records further reveal that the matter was again heard on 03.09.2026 and as the hearing remained inconclusive, this Court directed the matter to be listed today for final disposal.

18. While narrating the facts, another aspect is also required to be taken note of. Though the order dated 05.09.2025 directed the maintenance of status quo between the parties, the Petitioner herein was not allowed to function as the President. It is under such circumstances that the Petitioner filed the writ petition before this Court which was registered and numbered as WP(C) No.2359/2026. In the said writ petition amongst the various reliefs sought for, one such relief was the issuance of a writ in the nature of mandamus thereby directing and commanding the Respondent Authorities, more particularly, the District Commissioner, Sribhumi; the Chief Executive Officer, Sribhumi Zilla Parishad as well as the Block Development Officer, Badarpur Chaitayanagar Development Block to activate the Petitioner's digital signature and provide all necessary administrative login credentials and access to the government portals (e-Gram Swaraj, etc.) to enable the Petitioner to discharge her statutory duties as President of Umarpur Gaon

Panchayat. When the said writ petition being WP(C) No.2359/2026 was moved, the learned Coordinate Bench of this Court vide an order dated 19.06.2026 issued notice and further observed that the Panchayat and Rural Development Department shall traverse the observations made in the order dated 08.05.2026 and shall deal with the issue who is presently holding the charge of the President of the Gaon Panchayat.

19. The said writ petition was withdrawn on 03.09.2026 with a further observation that the interim order, if any, stood vacated. In other words, in view of the withdrawal of the writ petition being WP(C) No.2359/2026, the various reliefs which were sought including the relief that the Petitioner should be permitted to discharge the functions of the President of Umarpur Gaon Panchayat, stood closed on withdrawal.

20. In the backdrop of the above, it is now relevant to take note of that pursuant to the withdrawal of WP(C) No.2359/2026, the Chief Executive Officer, Sribhumi Zilla Parishad observed that the District Commissioner's order dated 27.08.2025 declaring the Respondent No. 6, as the President must be implemented in letter and spirit. This communication was issued on 17.09.2026 which is the subject matter of challenge in WP(C) No.5204/2026.

21. The learned Coordinate Bench of this Court vide an order

dated 22.09.2026 while issuing notice observed that the directions made in the order dated 17.09.2026 for implementation of the order dated 27.08.2025 shall not be given effect till the returnable date.

SUBMISSIONS ON BEHALF OF THE LEARNED COUNSEL FOR THE PARTIES

22. Mr. K. N. Choudhury, the learned Senior Counsel appearing on behalf of the Petitioner submitted that taking into account Rule 46(9) of the Rules of 1995 whereby a declaration of result made under Rule 46(8) of the Rules of 1995 is final, proceedings under Section 11 of the Act of 1994 could not have been maintained or even decided by the District Commissioner, and therefore, the impugned order dated 27.08.2025 is without jurisdiction, and accordingly, liable to be interfered with. The learned Senior Counsel further submitted that in the meeting which was held on 03.07.2025, the parties to the present proceedings, more particularly the Petitioner as well as the Respondent No.6 had duly agreed to that both secured equal votes, and therefore, participated in the procedure as envisaged in terms with Rule 46(8) read with Rule 45(1) of the Rules of 1995, and therefore, the Respondent No.6 cannot challenge the ballot paper or even the toss of coin which had taken place in terms with the procedure mandated under Rule 45(1) of the

Rules of 1995.

23. The learned Senior Counsel also submitted drawing reference to Page 31 of WP(C) No.5253/2025 to the effect that the vote mark though was almost in the middle of the names of the Petitioner and the Respondent No.6, but the larger portion of the vote mark was towards the Petitioner, and as such, in terms with the directions issued for the Panchayat Elections, 2025, i.e. the Instructions issued to all Trainers, Counting Supervisors and Counting Assistants, the said ballot paper was not only valid but also that the vote should be counted in favour of the Petitioner. He referred to the valid Sample No.2 and submitted that as the major portion of the cross mark was in favour of the Petitioner, the ballot paper in question was valid and could not have been rejected.

24. The learned Senior Counsel further submitted that if the ballot paper is valid, the vote has to be counted in favour of the Petitioner, and therefore, as the Petitioner and the Respondent No.6 had duly agreed to the procedure as stipulated under Rule 45(1) of the Rules of 1995, the declaration that the Petitioner is the President should be upheld thereby setting aside and quashing the impugned order dated 27.08.2025.

25. The learned Senior Counsel further referring to the

judgment of the Constitution Bench of the Supreme Court in the case of ***High Court Bar Association Allahabad vs. the State of Uttar Pradesh and Others,*** reported in ***(2024) 6 SCC 267***, submitted that as there was an interim order passed on 05.09.2025 thereby directing the parties to maintain status quo, the said interim order cannot be said to be vacated unless specifically mentioned that it is vacated. In that regard, he referred to Paragraphs 54, 55 and 56 of the said judgment. The learned Senior Counsel therefore submitted that the impugned communication dated 17.09.2026 which is assailed in WP(C) No.5204/2026 is therefore liable to be interfered with.

26. Mrs. M. Hazarika, the learned Senior Counsel assisted by Mr. J. I. Borbhuiya, the learned counsel appearing on behalf of the Respondent No.6 submitted that the finality which is attached to the result of the election by virtue of Rule 46(9) of the Rules of 1995 is in respect to the declaration of results to be made in terms with Rule 46(8) of the Rules of 1995. The learned Senior Counsel therefore submitted that the Rule 46(8) envisages two situations; first, a declaration of result when a candidate secures the highest number of votes in respect to a particular post whereby the candidate is declared as the President or the Vice-President as the case may be. The second situation is where, when two or more candidates secure equal number of

votes then in such case the procedure mandated under Rule 45 of the Rules of 1995 has to be followed. The learned Senior Counsel therefore submitted that the finality so attached by Rule 46(9) of the Rules of 1995 is only in respect to the declaration of the result which has nothing to do with an election dispute in as much as an election dispute resolution is provided under Section 11 of the Act of 1994. The learned Senior Counsel referring to Section 11 of the Act of 1994 submitted that the said provision is unambiguous, unfettered and unbridled by any of the restrictions contained in the Rules of 1995, and therefore, to put a restriction as contended by the learned Senior Counsel for the Petitioner would be interfering with the legislative wisdom in so far as Section 11 is concerned. The learned Senior Counsel further submitted that Section 11 of the Act of 1994 provides that the validity of any election to the President or the Vice-President shall be decided by the Deputy Commissioner.

27. Referring to Section 141 of the Act of 1994, Mrs. M. Hazarika, the learned Senior Counsel submitted that the power has been conferred upon the State Government to make Rules for carrying out the purpose and object of the Act. Elaborating further, the learned Senior Counsel therefore submitted that Section 11 of the Act of 1994 does not put any restrictions on questioning the validity of an election to the President or the

Vice-President, and as such, the Rules so framed for carrying out the purpose and the object of the Act cannot be interpreted to curtail the powers conferred under Section 11 of the Act of 1994. In that regard, the learned Senior Counsel referred to the judgments of the Supreme Court in the case of ***Kunj Behari Lal Butail & Others vs. State of H.P. & Others***, reported in ***(2000) 3 SCC 40*** wherein the Supreme Court observed that the delegated power to legislate by making Rules cannot circumscribe the statute in as much as the Rules have been made for carrying out the purpose of the Act. The delegated power as submitted by the learned Senior Counsel cannot be used to bring within its net a subject excluded by the Act itself or to bring into existence substantive right or obligation or disabilities not contemplated by the provisions of the Act. The learned Senior Counsel also referred to the judgment of the Supreme Court in the case of ***Jyoti Basu and Others vs. Debi Ghosal and Others***, reported in ***(1982) 1 SCC 691*** and referred to Paragraph No.8 and submitted that a right to elect, fundamental though it is to democracy, is anomalously enough, neither a fundamental right nor a common law right. It is pure and simple, a statutory right. Statutory creations as they are, they are subject to statutory limitation. An election proceeding is a statutory proceeding where neither the common law nor the principles of equity apply, but only those

Rules which the statute makes and applies.

28. The learned Senior Counsel therefore submitted that the provisions of Rule 46(8) and Rule 46(9) of the Rules of 1995 under no circumstance can be said to circumscribe the powers of resolution of the dispute pertaining to the validity of the election of a President as envisaged under Section 11 of the Act of 1994.

29. On merits, the learned Senior Counsel submitted that a perusal of the ballot paper in question would show that the said vote mark was almost in the middle. Referring to Sample No.6 at Page 160 to the writ petition being WP(C) No.5253/2025, the learned Senior Counsel submitted that this is a classic example of an invalid ballot paper in as much as it cannot be ascertained for whom the vote was cast. The learned Senior Counsel further referring to Page 146 to the writ petition being WP(C) No.5253/2025 submitted that if a cross mark is placed against the names and the symbols of more than one candidate, it is a case for rejecting a ballot paper. The learned Senior Counsel therefore submitted that in the instant case what was done by the District Commissioner by passing the impugned order is exercising the powers which the Officer authorized by the Deputy Commissioner to conduct the election ought to have done in terms with Rule 46(6) read with Rule 46(7) (b) and (c) of the Rules of 1995.

30. In so far as the contention made by the learned Senior Counsel appearing on behalf of the Petitioner to the effect that the Respondent No.6 having agreed to the procedure as mandated under Rules 45, the learned Senior Counsel referred to the judgment of the Supreme Court in the case of ***Jibontara Ghatowar vs. Sarbananda Sonowal and Others***, reported in ***(2003) 6 SCC 452*** and placed reliance upon Paragraph No.14 wherein the Supreme Court observed that a defect in the ballot paper having been detected, the issue had to be decided by the satisfaction of the Returning Officer. Even a concession given by the candidates or their election agents submitting to a decision arrived at by the Returning Officer in accordance with the law may come in the way of the candidate turning around and disputing a doubtful position of law taken as resolved and conceded or accepted. The learned Senior Counsel therefore submitted that in an election dispute, a concession contrary to law or a failure to discharge statutory obligation cast on an election officer which has resulted in prejudicing the result of the election cannot ipso facto claim immunity from challenge.

POINTS FOR DETRMINATION

(i) Whether the District Commissioner, Sribhumi had the jurisdiction to exercise the powers under Section 11 of the Act of 1994 in the present facts and circumstances of the

case?

(ii) Whether the impugned order dated 27.08.2025 calls for any interference?

ANALYSIS AND DETERMINATION

FIRST POINT FOR DETERMINATION

31. In the foregoing segment of the present judgment, this Court has reproduced the provisions of Rule 46(8) of the Rules of 1995 as well as Section 11 of the Act of 1994. Rule 46(9) of the Rules of 1995 being relevant, is reproduced herein under:-

> *"46(9) Declaration as to the election of the President and Vice-President of the Gaon Panchayat under sub-rule (8) by the Officer authorised, shall be final."*

32. Section 11 of the Act of 1994 was amended by the Assam Panchayat (Amendment) Act, 2023 whereby the validity of the election of a President was brought within the fold of Section 11 of the Act of 1994. A perusal of Section 11 of the Act of 1994 would show that it uses the term "any dispute" which in the opinion of this Court would bring within the fold of Section 11 of the Act of 1994 all such disputes that have arisen in respect of an election to the office of the President and the Vice-President of the Gaon Panchayat whatsoever. Further, the Legislature has not circumscribed the powers under Section 11 of the Act of 1994 to be controlled by the Rules of 1995.

33. In the backdrop of the above, if this Court now takes note of Rule 46(8) and Rule 46(9) of the Rules of 1995, it would show that Rule 46(8) refers to declaration of a candidate to be elected as the President and Vice-President of the Gaon Panchayat. It can be either by way of securing the highest number of votes in respect to the respective post or a declaration of the election by following the procedure prescribed under Rule 45 of the Rules of 1995. Rule 46(9) of the Rules of 1995 does not confine the finality to a declaration of result in terms with Rule 45; it mandates the declaration of result under Sub-Rule (8) of Rule 46 of the Rules of 1995.

34. It is also very pertinent to mention, that Rule 46 of the Rules of 1995 specifically deals with the election of the President and the Vice-President of the Gaon Panchayat. In the said provision, how the elections are to be conducted, who is to conduct, where it is to be conducted and how the declaration of results is to be made, have been prescribed. The finality attached to the declaration of results in terms with Rule 46(9) of the Rules of 1995, in the opinion of this Court, has to be limited within the fold of the said Rule 46 of the Rules of 1995 itself. The said opinion is based upon the settled principles of administrative law that the Rules framed for carrying out the purpose of the Act under any circumstances cannot be permitted to override or

circumscribe the powers conferred upon an Authority under the parent Act provides so. The judgment of the Supreme Court referred to in the case of ***Kunj Behari Lal Butail & Others (supra)*** also supports the view that the delegated power to make the Rules cannot be used to bring within its net a subject excluded by the Act itself or to bring into existence substantive rights or obligations or disabilities not contemplated by the Act. It is also the opinion of this Court that if Rule 46 (9) of the Rules of 1995 is to be read that the declaration of the result in an election in terms with Rule 46(8) read with Rule 45(1) of the Rules of 1995 cannot be challenged under Section 11 of the Act of 1994, it would render Section 11 of the Act of 1994 subject to the Rules of 1995 though Section 11 of the Act of 1994 makes it clear that any dispute pertaining to the legality and validity of an election to President and Vice-President is to be decided by the Deputy Commissioner, such interpretation would curtain the powers conferred by Section 11 of the Act of 1994.

35. Rule 46(9) of the Rules of 1995 as already observed hereinabove not only envelops within itself a declaration of result under Rule 45 of the Rules of 1995, but also a declaration of result to a candidate who has secured the highest number of votes in the respective post. Under such circumstances, if the submission made by the learned Senior Counsel for the Petitioner

is accepted, it would result in Rule 46(8) and Rule 46(9) of the Rules of 1995 running counter to Section 11 of the Act of 1994, and therefore, would become ultra vires the Act of 1994.

36. In that view of the matter, the submission of the learned Senior Counsel for the Petitioner that the Respondent No.6 could not have approached the District Commissioner challenging the ballot paper as well as the election of the Petitioner as the President cannot be accepted.

37. This Court therefore decides the ***First Point for Determination*** holding inter alia that the District Commissioner had the authority and jurisdiction to pass the order dated 27.08.2025 in terms with Section 11 of the Act of 1994. It is also observed that the directions passed by the learned Coordinate Bench in the order dated 21.07.2025 in WP(C) No.3922/2025 on the consensus of the parties amount to converting the representation submitted by the Respondent No.6 dated 04.07.2025 into an election petition challenging the validity of the election of the Petitioner as President of the Gaon Panchayat in question.

SECOND POINT FOR DETERMINATION

38. The second point for determination is a question on merit as regards the legality and validity of the impugned order dated 27.08.2025. It may not be out of place to mention that the

District Commissioner, Sribhumi is a fact-finding authority who had decided that the ballot paper in question wherein the vote mark appeared almost in the middle ought to have been rejected. To interfere with such finding of fact, in exercise of certiorari jurisdiction, the burden lies upon the Petitioner to show that such finding of fact suffered from perversity or is contrary to the settled principles of law. Nothing in that regard could be shown except the instructions which were issued to the Trainers, Supervisors and Counting Assistants by the Assam State Election Commission.

39. The learned Senior Counsel appearing on behalf of the Petitioner referred to Sample No.2 which is at Page 155 to the writ petition being WP(C) No.5253/2025 and submitted that the said Sample No.2 would apply. In the opinion of this Court, Sample No.2 at Page 155 to the writ petition being WP(C) No.5253/2025 would not apply, in as much as at Sample No.2, a major part of the vote mark was in favour of one Amar Singh and the remaining portion was in the blank portion not touching upon the other candidate. On the other hand, a perusal of invalid Sample No.6 at Page 160 of WP(C) No.5253/2025, which the learned Senior Counsel for the Respondent No.6 placed reliance upon, in the opinion of this Court squarely applies to the ballot paper which is at Page 31 of the WP(C) No.5253/2025.

40. This Court now finds it relevant to take note of the question of waiver as contended by the learned Senior Counsel appearing on behalf of the Petitioner it is submitted that the Respondent No.6 by accepting that the Petitioner and the Respondent No.6 having secured an equal number of votes could not have challenged the procedure mandated under Rule 45 of the Rules of 1995. In the opinion of this Court, the said submission is misconceived in as much as a perusal of Rule 46(7)(b) and (c) of the Rules of 1995 categorically provides that a ballot paper shall be invalid if the cross mark is placed against more than one name or the cross mark is so placed thereon as to make it doubtful for which candidate the vote was intended to be given. Rule 46(7)(b) and (c) of the Rules of 1995 are reproduced herein under:-

> *"46(7) (b) the cross mark is placed against more than one name; or*
>
> *(c) the cross mark is so placed thereon as to make it doubtful for which candidate the vote was intended to be given."*

41. It was therefore the obligation and duty of the officer authorized by the Deputy Commissioner in terms with Rule 46(1) to have rejected the said ballot paper, in as much as the Officer was conducting the election under Rule 46 of the Rules of 1995. The learned Senior Counsel appearing on behalf of the Respondent No.6 had referred to the judgment of the Supreme

Court in the case of ***Jibontara Ghatowar (supra).*** Paragraph 14 of the said judgment is of relevance which is reproduced herein under:-

> "*14. A bare reading of the rules shows that the obligation is cast on the polling officer to stamp with such distinguishing mark as the Election Commission may direct and to sign in full on the back of the ballot papers. The candidate has no role to play in the performance of such duty by the polling officer. Absence of mark and the signature renders the ballot paper liable to be rejected. However, still, where the Returning Officer feels satisfied that such defect has been caused by any mistake or failure on the part of the Presiding Officer or polling officer, the ballot paper shall not be rejected merely on the ground of such defect. An analysis of this rule and the legal implication thereof may not detain us any longer inasmuch as we find these rules having been dealt with in Arun Kumar Bose v. Mohd. Furkan Ansari, wherein this Court found that the absence of signature and distinguishing mark on seventy-four ballot papers was attributable to failure on the part of the Presiding Officer. Having found so, the Court held:*
>
> > '*It was the obligation of the Presiding Officer to put his signature on the ballot papers before they were issued to the voters. Every voter has the right to vote and in the democratic set-up prevailing in the country no person entitled to share the franchise can be denied the privilege. Nor can the candidate be made to suffer. Keeping this position in view, we are of the*

definite view that the present case is one of failure on the part of the Presiding Officer to put his signature on those ballot papers so as to satisfy the requirement of law. The proviso, once it is applicable, has also a mandate that the ballot paper is not to be rejected. We, therefore, hold that the ballot papers were not liable to be rejected as the proviso applied and the High Court, in our opinion, came to the correct conclusion in counting these ballot papers and giving credit thereof to Respondent 1.'

It is pertinent to note that it is nobody's case that 824 ballot papers were spurious. The present one is not a case of booth-capturing or rigging. In an election dispute, there are not the candidates alone who are the persons interested. In a democratic set-up, as is ours, in an election, the fate of the whole constituency is at stake and every voter and every citizen has, therefore, an interest in that candidate being returned to assembly who has secured the majority of the valid votes. An election dispute cannot be decided on concessions contrary to law. A defect in the ballot papers in the light of Rule 38(1) read with Rule 56(2)(h) having been detected, the issue had to be decided by the satisfaction of the Returning Officer. The concession given by candidates or their election agents submitting to a decision arrived at by the Returning Officer in accordance with law may come in the way of that candidate turning around and disputing a doubtful position of law taken as resolved and conceded or accepted. In an election dispute, a consensus contrary to law or a failure to discharge statutory obligation cast on

an election officer which has resulted in prejudicing the result of the election, cannot ipso facto claim immunity from challenge. In the present case the Returning Officer has clearly failed in discharging his obligation cast by the first proviso below clauses (g) and (h) of sub-rule (2) of Rule 56. Disagreeing with the High Court, therefore, we hold that these 824 ballot papers should have been included for the purpose of counting."

42. From a perusal of the above quoted paragraph, it would be seen that in an election dispute, a concession given before the Returning Officer which is contrary to law or a failure to discharge statutory obligation cast on an election officer cannot *ipso facto* be claimed as an immunity from challenge. In the instant case, merely because the Respondent No.6 had agreed to the ballot paper in question which had the vote mark almost in the middle between the Petitioner and the Respondent No.6 to be counted in favour of the Petitioner and thereby agreed to the toss of coin, does not, in the opinion of this Court operate as a waiver or an estoppel on the part of the Respondent No.6 to challenge the same under Section 11 of the Act of 1994 in as much as there was a failure of a statutory obligation cast upon the Officer authorized by the Deputy Commissioner to exercise powers in terms with Rule 46(7)(b) and (c) of the Rules of 1995.

43. Considering the above, this Court does not find that the

impugned order dated 27.08.2025 calls for any interference, more so as nothing was shown which would reveal that the impugned order dated 27.08.2025 was perverse or contrary to law.

44. In the backdrop of the above, this Court now finds it relevant to take note of WP(C) No.5204/2026. This writ petition is the fallout of the withdrawal of WP(C) No.2359/2026.

45. At the cost of repetition, this Court finds it pertinent to observe that in WP(C) No.2359/2026, the Petitioner had sought a direction that she should be permitted to carry out the statutory functions of the President which admittedly the Petitioner was not permitted to do. The withdrawal of the said writ petition had resulted in the Petitioner giving up the relief sought for to the effect that the Petitioner should be permitted to exercise the statutory powers of the President. It is therefore the opinion of this Court that the impugned order dated 17.09.2026 do not appear to be contrary.

46. Be that as it may, this Court having upheld the order dated 27.08.2025 whereby the Respondent No.6 was declared to be the President of the Umarpur Gaon Panchayat, no further deliberation is required in respect of WP(C) No.5204/2026.

47. Accordingly, both the writ petitions stand disposed of with the

following observations and directions:-

(i) This Court, in exercise of the powers of judicial review finds no ground to interfere with the order dated 27.08.2025 passed by the District Commissioner, Sribhumi.

(ii) The Writ Petition being WP(C) No.5253/2025 is meritless, and accordingly, stands dismissed.

(iii) In view of the order dated 27.08.2025 passed by the District Commissioner, Sribhumi not being interfered with, nothing remains in WP(C) No.5204/2026. Accordingly, this Court therefore closes the writ petition being WP(C) No.5204/2026 by vacating the interim order dated 22.09.2026.

(iv) There shall be no order as to costs.

JUDGE

Pradip Kumar Kalita
Comparing Assistant

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