

GAHC010047422026



DB

2026:GAU-AS:4711-

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

**Case No. : WA/95/2026**

ELOWARA KHATUN  
(PRESIDENT OF 91 NO. AG-MANDIA JADAVPUR GAON PANCHAYAT), W/O  
HASINUR AHMED, VILLAGE- MOURIPAM, P.O- MANDIA, P.S- BAGHBOR,  
DIST- BARPETA, ASSAM- 781308

VERSUS

SHAHIDA AHMED AND 7 ORS.  
W/O MUSLIM UDDIN, VILLAGE- AG- MANDIA, P.O- MANDIA, P.S AND  
DIST- BARPETA ASSAM, PIN-781308

2:MAHIBUL HOQUE  
S/O OSMAN ALI  
VILLAGE GUPALPUR  
P.O- POHUMARA  
P.S- BAGHBOR  
DIST- BARPETA  
ASSAM  
PIN-781308

3:THE STATE OF ASSAM  
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO THE GOVT.  
OF ASSAM  
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT  
DISPUR GUWAHATI- 781006

4:THE DISTRICT COMMISSIONER  
BARPETA  
DIST- BARPETA  
ASSAM  
PIN-784176

5:THE CIRCLE OFFICER  
CHENGA REVENUE CIRCLE (AUTHORISED OFFICER)  
P.O.- CHENGA  
P.S.- BARPETA  
DIST- BARPETA  
ASSAM

6:THE BLOCK DEVELOPMENT OFFICER  
GUMAFULBARI DEVELOPMENT BLOCK  
P.S.- TARABARI  
DIST- BARPETA  
ASSAM

7:THE STATE ELECTION COMMISSION  
ASSAM  
REPRESENTED BY ITS COMMISSIONER  
PANJABARI  
GUWAHATI- 781037

8:THE DISTRICT ELECTION OFFICE  
BARPETA  
DIST- BARPETA  
ASSA

**Advocate for the Petitioner** : MR H R A CHOUDHURY, P. GHOSH,MR. SAYED SALIM AHMED,MR. A M AHMED

**Advocate for the Respondent** : MR. R ALI (FOR CAVEATOR), SC, ASEC,SC, P AND R.D.,GA, ASSAM,MR H A AHMED (FOR CAVEATOR)

**BEFORE**

**HONOURABLE THE CHIEF JUSTICE MR. ASHUTOSH KUMAR  
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

**ORDER**

**01-04-2026**

(AD Choudhury, J)

1. The present appeal raises a question of some significance, relating

to electoral fairness and statutory discipline, namely, whether a vote validly cast can be invalidated on an alleged breach of secrecy attributed to the elector in the absence of any expressed statutory prescription to that effect.

2. The appellant calls into question the correctness of the judgment dated 20.02.2026 passed in WP(C) 5320/2025, whereby the learned Single Judge set aside the order dated 30.08.2025 passed by the District Commissioner, Barpeta, cancelling the vote of the writ petitioner No. 2.
3. The fact lies in a narrow compass.
4. In the election to the office of President of 91 No. Agmandia Jadavpur Gaon Panchayat, the respondent No.1 and the appellant secured 5 votes each, resulting in a tie.
5. Thus, the vote cast by the respondent No. 2 assumed determinative significance.
6. The said vote, however, was cancelled by the District Commissioner on the grounds that, while casting the vote, a flashlight was observed, leading to the inference that the ballot may have been photographed, thereby breaching secrecy.
7. Consequent upon such cancellation, the appellant came to be declared elected, which was challenged by the respondent Nos. 1 and 2 before the learned Single Judge.
8. The learned Single Judge, upon a consideration of the statutory framework and the materials on record, came to the conclusion that the cancellation of the vote was not supported by any provision of law and was based on conjectural reasoning.
9. The order of the District Commissioner was accordingly set aside,

and the vote restored, resulting in a tie to be resolved in accordance with the prescribed procedure mandated under the Assam Panchayat Act, 1994 and the Assam Panchayat (Constitution) Rules, 1995.

10. The principal submission advanced on behalf of the appellant is that secrecy of the ballot is a foundational attribute of any electoral process and that any conduct undermining such secrecy must necessarily invite invalidation, even if not specifically enumerated.
11. The respondents, on the other hand, contended that electoral rights being statutory in nature, any curtailment thereof must be traceable to an express provision and cannot be expanded by implication.
12. The controversy must be resolved on a careful reading of the statutory scheme. Rule 46 (7) of Assam Panchayat (Constitution) Rules, 1995, which enumerates the circumstances in which a ballot paper shall be treated as invalid. This includes cases where the ballot bears identification marks, contains multiple markings, is ambiguously marked, is left unmarked or lacks the prescribed authentication.
13. The language employed is clear and categorical, leaving no scope for enlargement by implication. Significantly, none of the grounds specified in Rule 46(7) contemplates invalidation on account of any alleged breach of secrecy by a voter. In our considered view, the rule is exhaustive.
14. The doctrine that express mention of one thing excludes others applies with full force, and it is not open either to the executive or to the court to supplement the grounds of invalidation.

15. The reliance placed on Section 127J of the Assam Panchayat Act, 1994, is equally misplaced. The said provision contemplates cancellation of the ballot where an elector refuses to observe the procedure prescribed for voting.
16. The expression "procedure" must essentially be confined to the steps integral to the act of voting, namely, marking of the ballot, its folding and its deposit in the ballot box in terms of Rule 39 of the Conduct of Election Rules, 1961.
17. There is no finding, nor even an allegation, that the elector failed to comply with any of these prescribed steps.
18. The attempt to invoke Rule 54 of the Assam Panchayat (Constitution) Rules, 1995, to import provisions of the Representation of the People's Act, 1951, does not carry the matter any further. Rule 54 applies only to matters not provided for and therefore cannot be used to introduce substantive grounds for invalidation.
19. Even otherwise, Section 128 of the Representation of the People's Act 1951, which has been relied upon by the appellant, is directed not at voters but at officials connected with the conduct of elections, mandating that they maintain secrecy.
20. Its application to the conduct of an election of the present nature is wholly misconceived.
21. The substratum of the impugned administrative action is an interference drawn from the observation of a flashlight.
22. There is no direct evidence that any photograph was taken, nor any material to substantiate such an interference. No device was seized, no image recovered, and no contemporaneous record established beyond doubt that the alleged act occurred.

23. The conclusion of the District Commissioner, Barpeta, therefore, rests on a speculation.
24. It is trite that where civil consequences ensue, particularly in matters affecting electoral rights, the decision must be founded on cogent and reliable material. Suspicion, however strong, cannot take the place of proof.
25. To permit the invalidation of a vote on such tenuous grounds would introduce an element of uncertainty wholly alien to the statutory scheme.
26. The principle of secrecy of the ballot, though fundamental, is intended to protect the voter and to ensure that the vote is cast freely and without fear or influence. It is not designed to operate as a punitive measure against the voter in the absence of a clear statutory violation.
27. In the present case, there is no allegation of coercion, inducement or compromise of the electoral process.
28. The alleged conduct, even if assumed, does not fall within any statutorily recognised ground of invalidation. The District Commissioner, while exercising power under the Assam Panchayat Act, 1994 and the Assam Panchayat (Constitution) rules, 1995, is bound by the confines of the statute. The discretion vested is structured and cannot travel beyond the limits prescribed by law.
29. The impugned order, as rightly noticed by the learned Single Judge, proceeds on considerations which are not germane to the statutory framework and is therefore unsustainable.
30. It is reiterated that while the purity of election must be jealously guarded, such protection must operate within the discipline of the

law.

31. For the reasons aforesaid, we find no infirmity in the judgments and order 20.02.2026 passed by the learned Single Judge in WP(C) No. 5320/2025, warranting interference.
32. The appeal is accordingly dismissed. The judgment under appeal is affirmed.
33. The consequential direction to proceed in accordance with Rule 45 of Assam Panchayat (Constitution) Rules, 1995, for resolving the tie shall be carried out within the time frame indicated by the learned Single Judge.
34. There shall be no order as to costs.

**JUDGE**

**CHIEF JUSTICE**

**Comparing Assistant**