

GAHC010234672022



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

Case No. : CRP(IO)/274/2022

TONMOY BORAH
SON OF SRI BUDHIN BORAH,
THE MAGISTRATE IN-CHARGE OF DHEKIAJULI MUNICIPAL BOARD
ELECTION 2022 AND CIRCLE OFFICER, DHEKIAJULI REVENUE CIRCLE.

VERSUS

THE STATE OF ASSAM AND 5 ORS
DEPUTY COMMISSIONER/ DISTRICT MAGISTRATE, SONITPUR, TEZPUR-
784001, ASSAM.

2:THE ASSAM STATE ELECTION COMMISSIONER
DISPUR
GUWAHATI-06.

3:THE MAGISTRATE IN-CHARGE OF DHEKIAJULI MUNICIPAL BOARD
DHEKIAJULI- 784110.

4:SMTI. RANJEETA JAISWAL
WIFE OF SRI RAVI JAISWAL

RESIDENT OF WARD NO. 2
DHEKIAJULI TOWN

P.O. AND P.S. DHEKIAJULI

DISTRICT- SONITPUR
ASSAM

PIN- 784110.
(CANDIDATE OF BHARATIYA JANATA PARTY AND TH RETURNED
CANDIDATE)

5:KRISHNA RAWAT
SON OF LATE SHUKUMAR RAO

RESIDENT OF WARD NO. 2
DHEKIAJULI TOWN

P.O. AND P.S. DHEKIAJULI

DISTRICT- SONITPUR
ASSAM

PIN- 784110.
(CANDIDATE OF INDIAN NATIONAL CONGRESS).

6:PRABHAKAR SUKHLA
SON OF RAMESWAR SUKHLA

RESIDENT OF WARD NO. 2
DHEKIAJULI TOWN

P.O. AND P.S. DHEKIAJULI

DISTRICT- SONITPUR
ASSAM

PIN- 784110.
(INDEPENDENT CANDIDATE/ ELECTION PETITIONER

Advocate for the Petitioner : MR. R P SARMAH

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 17.11.2022

Heard Mr. R.P. Sarmah, learned Senior Counsel, assisted by Ms. S.P. Chetry, learned counsel for the petitioner. Also heard Ms. U. Das, learned Addl. Senior Govt. Advocate appearing for the respondent no.1 and Mr. R. Dubey,

learned standing counsel for the respondent nos. 2 and 3.

2. By this revision petition under Article 227 of the Constitution of India, the petitioner has assailed the order dated 10.11.2022 passed by the learned District Judge, Sonitpur, Tezpur in Misc. (Election) Pet. No. 3/2022, thereby debarring the petitioner (defendant in the proceeding) to file written statement while his application for rejection of election petition under Order VII Rule 11 CPC was pending.

3. The learned Senior Counsel for the petitioner has submitted that at the relevant point of time, he was the Magistrate-in-Charge of Dhekiajuli Municipal Board Election of 2022 and in the election petition not only he was personally made as defendant, arraying him as defendant no.4, but in his official capacity as Magistrate-in-Charge, he was also arrayed as defendant no.3. Accordingly, he has submitted that he has been compelled to implead the post he was holding as respondent no.3 in this application.

4. In this case, it is seen that the petitioner is the person holding the post of respondent no.3, Therefore, as the petitioner has filed a litigation against himself, taking note of the submissions made by the learned Senior Counsel for the petitioner, the name of respondent no.3 is struck off.

5. It is made clear that by striking out the respondent no.3, under such circumstances, this revision would not be bad for non-joinder of necessary party.

6. Issue notice returnable on 07.12.2022.

7. The petitioner shall take steps within 2 days for service of notice on respondent nos. 4 to 6 by registered post with A/D. In addition, the petitioner shall take steps by way off dasti by routing the process through the Registry of this Court and upon service, an affidavit of service may be filed prior to the next date of listing.

8. The learned Senior Counsel for the petitioner has prayed for interim relief, which is opposed by the leaned Govt. advocate as well as by the learned standing counsel for respondent nos. 2 and 3.

9. Having regard to the fact that the application under Order VII Rule 11 CPC filed by the petitioner is pending for disposal before the learned Court below, the Court is inclined to stay the order dated 10.11.2022 passed by the learned District Judge, Sonitpur, Tezpur in Misc. (Election) Pet. No. 3/2022 till the next returnable date.

10. List on 07.12.2022.

JUDGE

Comparing Assistant