

GAHC010015662026



2026:GAU-AS:2734

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

Case No. : WP(C)/7351/2025

AYSHA KHATUN
W/O.- SURUT ZAMAL
VILL.- TARANGAPUR
P.O. TULSHIBARI
P.S. LAKHIPUR
DIST- GOALPARA
ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE ADDITIONALCHIEF SECRETARY TO THE GOVT. OF
ASSAM
PANCHAYAT RURAL DEVELOPMENT DEPARTMENT
DISPUR
GUWAHATI-06.

2:THE ASSAM STATE ELECTION COMMISSION

REPRESENTED BY ITS SECRETARY
DOWN TOWN
DISPUR
GUWAHATI-06.

3:THE COMMISSIONER

PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
PANJABARI
JURIPAR
GUWAHATI- 37.

4:THE DISTRICT COMMISSIONER

GOALPARA
ASSAM
PIN- 783101.

5:THE CHIEF EXECUTIVE OFFICER

GOALPARA ZILLA PARISHAD
GOALPARA
ASSAM
PIN -783101.

6:THE BLOCK DEVELOPMENT OFFICER
JOLESWAR DEVELOPMENT BLOCK
JOLESWAR
DIST- GOALPARA
ASSAM
PIN- 783132.

Advocate for : MR H R A CHOUDHURY
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 5 ORS

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

For the Petitioner(s) : Mr. N.H. Laskar, Advocate

For the Respondents(s) : Mr. J. Handique, Govt. Advocate
Mr. S. Dutta, Standing Counsel
Mr. R. Dubey, Standing Counsel

Date on which judgment was reserved : **NA**

Date of pronouncement of judgment : **23.02.2026**

Whether the pronouncement is of the
Operative part of the judgment? : **NA**

Whether the full judgment has been
pronounced? : **Yes**

JUDGMENT AND ORDER

Heard Mr. N.H. Laskar, the learned counsel appearing on behalf of the Petitioner. Mr. J. Handique, the learned Government Advocate appears on behalf of the District Administration and Mr. S. Dutta, the learned Standing Counsel appears on behalf of the P&RD Department. Mr. R. Dubey, the learned Standing Counsel appears on behalf of the Respondent No. 2.

PREFACE

2. The present writ petition has been filed assailing the order dated 09.12.2025 passed by the District Commissioner, Goalpara, whereby in exercise of the powers conferred under Section 111(2)(f) [wrongly written in the impugned order as Section 111(1)(f)] of the Assam Panchayat Act, 1994 (for short, "the Act of 1994"), as well as Rule 62(4)(b) & (c) of the Assam Panchayat (Constitution) Rules, 1995 (for short, "the Rules of 1995"), the Petitioner was removed from the 5 No. Sardarvita Tarangapur GP Ward Constituency under the Tarangapur Gaon Panchayat of Jaleswar Anchalik Panchayat.

THE CONSPECTUS OF FACTS

3. The Petitioner herein claims that she was born on 03.01.1996 to one Afzal Hoque of Village Kulamuya Choto Nichinpur, P.S. Fakirganj, in the district of Dhubri. The Petitioner appeared in the HSLC

Examination in 2012 from Kulamuya Nichinpur High School under the Assam Board of Secondary Education. The Petitioner was issued an HSLC admit card wherein her date of birth was recorded as 03.01.1996. In the registration card, her date of birth was also recorded as 03.01.1996, and in the HSLC certificate issued by the concerned High School, her date of birth was also recorded as 03.01.1996. Be that as it may, it is very pertinent to take note of the fact that in the High School Leaving Certificate issued by the Board of Secondary Education, Assam, the Petitioner's date of birth was recorded as 01.03.1996.

4. It is the further case of the Petitioner that on 05.01.2015, she married one Surat Zamal, son of Habibar Rahman of Tarangapur P.S., Lakhipur, in the district of Goalpara, as per Islamic rites and rituals. The Kabinnama has been enclosed as Annexure-5 to the writ petition, wherein the Petitioner's date of birth was recorded as 03.01.1996 and the date of marriage as 05.01.2015.

5. The Petitioner further stated that out of the said wedlock, a daughter and a son were born. The elder child, namely Ms. Sultana Parvin, was born on 06.11.2015, and the younger child namely Master Akhiruz Zamal was born on 13.11.2017. The birth Certificates were enclosed as Annexures-6 and 7 to the writ petition.

6. It is the case of the Petitioner that in the last Panchayat elections

held in the State of Assam in the year 2025, the Petitioner contested the election for Gaon Panchayat Member from 5 No. Sardarvita Tarangapur Gaon Panchayat Ward Constituency under 8 No. Tarangapur Gaon Panchayat in the district of Goalpara. The election was held on 07.05.2025 and the results were declared on 11.05.2025. The Petitioner, having secured the highest number of votes, won the election and accordingly was issued the return of election as per Rule 44(7) of the Rules of 1995. The Petitioner subsequently was elected as the President of the said 8 No. Tarangapur Gaon Panchayat.

7. It is the case of the Petitioner that to her surprise, the District Commissioner, Goalpara, i.e. the Respondent No. 4 on the basis of a complaint stated to have been filed by one Sri Hakimuddin, removed the Petitioner from membership of the Gaon Panchayat under Section 111(1)(f) of the Act of 1994 read with Rule 62(4)(b) & (c) of the Rules of 1995 vide an order dated 09.12.2025, that too, without issuing any show-cause notice and without giving her any opportunity of hearing. Being aggrieved, the Petitioner approached this Court by filing the present writ petition.

8. The record reveals that pursuant to the filing of the instant writ petition on 17.12.2025, this Court issued notice on 18.12.2025 making it returnable by 4 (four) weeks, and in the interim directed that the order dated 09.12.2025 passed by the District Commissioner,

Goalpara shall remain suspended. It is relevant to take note of that the Respondents have not filed any affidavit-in-opposition.

9. Be that as it may, one Hakimuddin, claiming to be the complainant, at whose instance the District Commissioner, Goalpara, had passed the impugned order dated 09.12.2025 sought leave to be arrayed as a Respondent to the instant writ petition by filing an Interlocutory Application, which was registered and numbered as I.A. (Civil) No. 386/2026. Along with the said application, the said Hakimuddin also filed another Interlocutory Application being I.A. (Civil) No. 385/2026 seeking vacation, modification and for alteration of the interim order dated 18.12.2025.

10. Today, when the matter was taken up for consideration of the said Interlocutory Applications, this Court vide a separate order, rejected the application filed by the said Hakimuddin on the ground that the applicant is neither a necessary nor a proper party to the present proceedings. Reasons have been separately assigned in the said order passed in I.A.(Civil) No. 386/2026.

11. It is a settled principle of law that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by the fresh reasons in the shape of an affidavit or otherwise. This proposition of law stands well settled in view of the judgment of the

Constitution Bench of the Supreme Court in the case of ***Mohinder Singh Gill & Another Vs. Chief Election Commissioner, New Delhi & Others*** reported in **(1978) 1 SCC 405**. Under such circumstances, irrespective of any affidavit being filed by the Respondents, the legality or validity of the impugned order dated 09.12.2025 can be looked into.

12. It was also pointed out before this Court by Mr. S. Dutta, the learned Standing Counsel, P&RD Department that the materials on the basis of which the impugned order dated 09.12.2025 was passed are available in the application filed by the said Hakimuddin in I.A. (Civil) No. 385/2026.

13. Mr. J. Handique, the learned Government Advocate appearing on behalf of the District Administration submitted that this Court can decide the legality and validity of the impugned order dated 09.12.2025 on the basis of the documents enclosed to the application registered as I.A.(Civil) No. 385/2026.

CONTENTIONS OF THE LEARNED COUNSELS FOR THE PARTIES.

14. Mr. N.H. Laskar, the learned counsel appearing on behalf of the Petitioner submitted that the Respondent No. 4 did not have the authority or jurisdiction to pass the impugned order dated

09.12.2025, that too, on an application filed by a stranger.

15. The learned counsel submitted that the Respondent No. 4 could not have exercised jurisdiction in respect to a disqualification which was in existence on the date of election and as such the impugned order is without jurisdiction and authority of law. The learned counsel further submitted that the impugned order dated 09.12.2025 suffers from complete non-application of mind inasmuch as a perusal of the impugned order would show that the ground on which the Petitioner was held to be disqualified is that the Petitioner had violated the Prohibition of Child Marriage Act (PCMA), 2006 whereas, a reading of the impugned order shows that the Petitioner was disqualified in terms with Section 111(1)(f) of the Act of 1994 which is disqualification relating to conviction. The learned counsel therefore submitted that the impugned order is not backed by the reasons assigned.

16. The learned counsel for the Petitioner submitted that the impugned order dated 09.12.2025 is based upon conjectures and surmises. The learned counsel submitted that the impugned order is not based upon the documents concerning the date of birth of the Petitioner or her husband, but is based upon some purported documents in relation to the age of the children of the Petitioner and then assuming the age of the Petitioner when she got married. The

learned counsel submitted that such documents cannot override the documents which have been statutorily issued. The learned counsel submitted that had a proper opportunity of hearing been provided to the Petitioner, the Petitioner would have been in a position to place the necessary materials.

17. The learned counsel for the Petitioner submitted that Sections 111(1) and 111(2) of the Act of 1994 contains various disqualifications for a person to be elected or co-opted and remain as President, Vice-President, or Member of the Zilla Parishad, Anchalik Panchayat, and Gaon Panchayat. The disqualification so mentioned by the legislature has to be strictly construed. The learned counsel further submitted that based upon certain purported documents obtained from certain sources by certain enquiry officer, the impugned order was passed presuming that the Petitioner herein had to be married prior to 2013 as the date of birth of the Petitioner's first child was in the year 2013 on the basis of the purported documents. The learned counsel submitted that the date of birth of the Petitioner's children as per the Government records i.e. the birth certificate issued by the Department of Health and Family Welfare Department are 06.11.2015 and 13.11.2017 and the Petitioner was married on 05.01.2015. The learned counsel further submitted that these birth certificates have a QR code, and the authenticity of the said certificate could have been ascertained by using the QR code. The learned counsel referring to

the birth certificate of the Petitioner's first child enclosed at page No. 37 of the I.A.(Civil) No. 385/2026 submitted that the said certificate also has a QR code and the authenticity of the said birth certificates could have been ascertained from that.

18. The learned counsel for the Petitioner further submitted that, while deciding the question of disqualification, the determination must be made on the basis of documents relating to the age of the Petitioner or her husband, and not on mere presumptions or assumptions, as has been done in the present case. He, therefore, submitted that the present case is a fit one for setting aside the impugned order.

19. Per contra, Mr. S. Dutta, the learned Standing Counsel appearing on behalf of the P&RD Department submitted that upon a perusal of the documents enclosed to I.A.(Civil) No. 385/2026, it would show that one Hakimuddin had submitted an application on 01.07.2025 to the District Development Commissioner, Goalpara for cancellation of the membership of the Petitioner on the ground that in the affidavit filed along with the nomination papers, the Petitioner's date of marriage was shown as 05.01.2015. However, the date of birth of her daughter was on 06.01.2013. The learned Standing Counsel further submitted that the question, as to whether, the Petitioner was afforded an opportunity is clear from the fact that the Petitioner

received notice issued by the District Development Commissioner, Goalpara dated 02.07.2025 whereby the Petitioner was asked to be present on 05.07.2025 in his office chamber. The learned Standing Counsel therefore submitted that the question of the Petitioner not being given an opportunity to be heard does not arise. The learned Standing Counsel, however, duly admitted that in the order dated 05.07.2025 there was a direction seeking verification of the certificates, thereby fixing the matter on 20.07.2025. The learned Standing Counsel further submitted that the enquiry report was submitted on 21.07.2025, but thereupon it is not known whether any enquiry report was afforded to the Petitioner or not. The learned Standing Counsel further submitted that it is the mandate of Rule 62(4)(a) of the Rules of 1995 that the candidate had to furnish an affidavit regarding his/her age along with his/her spouse at the time of the marriage, failing which the candidate would be disqualified. The learned Standing Counsel submitted that the grounds of disqualification as mentioned in Section 111 of the Act of 1994 are the only grounds on which a candidate can be disqualified, and not for any other ground as it is the mandate of the Act of 1994.

20. Mr. J. Handique, the learned Government Advocate appearing on behalf of the District Administration submitted that the Respondent No. 4 had passed the impugned order after making necessary

enquiries and taking into consideration the enquiry report dated 21.07.2025. The learned Government Advocate, however, submitted that no instructions are with him, as to whether, the enquiry report dated 21.07.2025 was provided to the Petitioner prior to the passing of the impugned order.

21. During the course of the hearing, this Court enquired with the learned Standing Counsel for the P&RD department as well as with the learned counsel representing the Respondent No. 4 as regards the competence of the Respondent No. 4 to pass the impugned order. The learned counsels submitted that the Respondent No. 4 had the jurisdiction in the circumstances, information comes to light that a candidate who was disqualified under Section 111 of the Act of 1994 was continuing to function as a member of the Panchayat.

22. The following points for determination arises:-

POINTS FOR DETERMINATION

- (i) Whether the District Commissioner has the authority and jurisdiction to pass the impugned order dated 09.12.2025?
- (ii) In the circumstances, the District Commissioner had the authority and jurisdiction, whether the impugned order dated 09.12.2025 suffers from patent illegality and perversity requiring

interference from this Court?

(iii) What relief or reliefs the parties herein are entitled to?

ANALYSIS AND DETERMINATION

FIRST POINT FOR DETERMINATION

23. The narration of the facts herein above shows that the Respondent No. 4 had assumed jurisdiction under Section 111 of the Act of 1994 read with Rule 62 of the Rules of 1995 on the basis of a complaint filed by one Hakimuddin. This aspect is apparent from the complaint filed on 01.07.2025 by one Hakimuddin, which is Annexure-D to I.A. (Civil) No. 385/2026 as well as the very notice which was issued by the District Development Commissioner, Goalpara on 02.07.2025 enclosed as Annexure-E to I.A.(Civil) No. 385/2026.

24. For the purpose of deciding the authority and jurisdiction of the Respondent No. 4 to pass the impugned order, it is relevant to take note of the Constitution of India read with the Act of 1994 and the Rules of 1995.

25. Chapter-IX of the Constitution of India is with the heading "Panchayats". Articles 243, 243-A to Article 243-O of the Constitution of India are the Articles in the said Chapter. This Chapter was inserted vide the Constitution (Seventy-Third Amendment) Act, 1992 and came

into force w.e.f. 24.04.1993. The Act of 1994 was enacted on the basis of Chapter-IX of the Constitution. Article 243-F of the Constitution stipulates "Disqualification for Membership". The said Article is the basis on which Section 111 of the Act of 1994 was enacted. Under such circumstances, the said Article 243-F of the Constitution is reproduced herein below:

"243F. Disqualifications for membership.— (1) A person shall be disqualified for being chosen as, and for being, a member of a Panchayat—

(a) if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned:

Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years;

(b) if he is so disqualified by or under any law made by the Legislature of the State.

(2) If any question arises as to whether a member of a Panchayat has become subject to any of the disqualifications mentioned in clause (1), the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide."

26. A perusal of the above quoted Article would show that a person shall be disqualified for being chosen as, and for being, a member of a Panchayat. The words "for being chosen as" and "and for being" are of importance. The phrase "for being chosen as" denotes the initial eligibility to contest an election or being selected for a position. The

phrase “and for being” refers to the ongoing right to remain in the position after being elected.

Sub-Clause(a) of Article 243F(1) of the Constitution stipulates when the person is disqualified i.e. if the person is disqualified by or under any law for the time being in force for the purpose of elections to the Legislature of the State i.e. either in terms with Article 191 of the Constitution of India or in terms with Chapter-III of the Representation of People’s Act, 1951 (for short, “the Act of 1951”), the person neither can be chosen nor can continue as a member of the Panchayat.

Sub-Clause (b) of Article 243-F(1) of the Constitution of India further stipulates that a person cannot be chosen and continue if the person is disqualified under any law made by the Legislature of the State and in the instant case would be the Act of 1994 and more particularly, Section 111 of the Act of 1994.

27. Article 243-F(2) of the Constitution of India is of seminal importance for the purpose of the present dispute. It stipulates that if any question arises as to whether a member of the Panchayat has become subject to any disqualification mentioned in Clause (1) of Article 243-F of the Constitution, the question shall be referred for the decision of such Authority and in such manner as the Legislature of the State may by law, provide. The said Article pre-supposes that the

person had already been chosen as a Member of the Panchayat.

The phrase “if a question arises” at Article 243-F(2) is also found in Article 103 and Article 192 of the Constitution. The Supreme Court in the case of ***Consumer Education and Research Society Vs. Union of India & Others*** reported in ***(2009) 9 SCC 648*** had the occasion to deal with the said phrase and when such reference is required to be made. The Supreme Court observed that a disqualification which occurs after a member of the Parliament had been chosen is required to be voluntarily declared by the Member and upon such declaration, the Seat of the Member of the Parliament results in vacation. However, in a circumstance when such member does not voluntarily make the declaration, a question if raised, would arise whether the Member is disqualified or not. Such question would be referred to the President of India for a decision. Paragraph No. 54 of the said judgment being relevant is reproduced herein below:

“54. The constitutional scheme, therefore, is that a person shall be disqualified from continuing as a Member of Parliament if he/she holds any disqualifying office of profit. Such a disqualification can result in the vacation of his/her seat when the Member admits or declares that he/she is holding the disqualifying office of profit. However, if he/she does not make a voluntary declaration about the same, the question of whether he/she is disqualified or not, if raised, shall have to be referred for a decision by the President of India and the same will be made after obtaining the opinion of the Election Commission of India. The question of whether a particular Member has incurred a disqualification can be referred for the decision of the President by any

citizen by means of making an application to the President. It is only after the President decides that the Member has incurred an alleged disqualification that the particular Member's seat would become vacant."

28. The Supreme Court further analyzed the various Clauses of Article 101 of the Constitution and observed that in some situations there would be an automatic vacation of the seat and in some situation when a decision is required from the President of India for a seat to be declared vacant. Paragraph No. 64 of the said judgment is relevant as it observes that when disputed questions arise as to whether the member had suffered disqualification, the decision of the President of India is required. Paragraph No. 64 reads as under:

"64. Let us visualise some of these possibilities. Assume a scenario where a political party states that one of its Members gave up his/her membership, and on the other hand the Member concerned denies the same fact. The six-month period prescribed for conducting a bye-election cannot obviously be computed from the alleged date of surrender of membership. The said period should be properly computed from the date on which a decision on the subject of disqualification is given by the Chairman or Speaker of the House. Similarly, when somebody alleges that a sitting MP had accepted an office of profit, there would be no automatic vacancy of the seat, as the question whether the Member accepted any office of profit or not, may be a disputed issue. Therefore, under the constitutional scheme, the vacancy would occur only when the dispute is resolved by a decision of the President which could then result in a declaration of disqualification. Hence, it is tenable to hold that when Article 101(3)(a) states that when a Member of House of Parliament becomes subject to any of the disqualifications mentioned in clause (1) or clause (2) of Article 102, it means when the President or the Speaker/Chairman as the case may be, by his decision declares that Member had incurred the disqualification and not earlier."

29. This Court is aware of the fact that in Chapter-IX of the Constitution of India, there is no *pari materia* provision like Article 101 and Article 190 of the Constitution of India. Under such circumstances, the question of automatic vacation is not provided in Part-IX of the Constitution insofar as Membership to Panchayats is concerned. In the backdrop of the above, let this Court now analyze Section 111 of the Act of 1994 and Rule 62 of the Rules of 1995.

30. A perusal of Section 111 of the Act of 1994 shows that the said provision stipulates the various grounds when a person cannot be elected or co-opted and remain as President, Vice-President or Member of the Zilla Parishad, Anchalik Panchayat and Gaon Panchayat.

It is notable to take note of the fact that the Legislature of the State while enacting Section 111 of the Act of 1994 did not use the phrases "for being chosen as" and "and for being" as is mentioned at of Article 243-F of the Constitution. Rather, the Section 111 of the Act of 1994 uses the words "elected or co-opted" and "and remain". The use of the words "and remain" pre-supposes that the member of the Panchayat had already been elected.

31. Sub-Section (1) of Section 111 of the Act of 1994 contains various grounds of disqualification which were in existence since the Act of 1994 came into force, except Sub-Clause (j) of Section 111(1)

of the Act of 1994, which was substituted vide the Assam Act No. X of 1997 w.e.f. 30.04.1997. Sub-Clauses (a) to (g) and (i) of Section 111(1) of the Act of 1994 stipulates the various disqualifications.

32. A perusal of Clauses (a) to (g) of Section 111(1) of the Act of 1994 stipulates various types of disqualifications. Clauses (a), (b) and (f) stipulates about a disqualification which was incurred on the date of the submission of the nomination. On the other hand, the disqualifications mentioned in Clauses (c), (d) and (e) are disqualifications which may be on the date of submission of the nomination or even subsequent to the elections. The disqualification is Clause (i) is subsequent to the elections. In other words, if a candidate has incurred disqualification mentioned in Clauses (a), (b), (c), (d), (e) and (f) of Section 111(1) of the Act of 1994, the person cannot be elected. On the other hand, if a person entails disqualification in terms with Clauses (c), (d), (e) and (i), the person cannot remain as a member of the Panchayat.

33. Clause (h) of Section 111(1) of the Act of 1994 is very pertinent for the purpose of the instant dispute, and as such, the same is reproduced herein under:

“(h) if any question arises as to whether a member of a Panchayat body at any level has become subject to any of the disqualifications under this section, the question shall be referred for decision of such authority and in such manner as the Government may by law provide;”

34. A reading of the above quoted Clause (h) of Section 111(1) of the Act of 1994 would show that it is similarly worded with Article 243-F of the Constitution of India. It stipulates that if any question arises as to whether a member of a Panchayat body at any level has become subject to any of the disqualifications under Section 111 of the Act 1994, the question shall be referred for a decision of such authority and in such manner as the Government may by law provide. The difference, however, in the language between Article 243-F of the Constitution with Section 111(1) of the Act of 1994 is that whilst Article 243-F of the Constitution stipulates "and in such manner as the Legislature of the State may, by law, provide", but in Section 111(1) (h) of the Act of 1994 it stipulates "and in such manner as the Government may by law provide".

35. The words in Clause (h) of Section 111(1) of the Act of 1994 "the question shall be referred for decision of such authority and in such manner as the Government may by law provide" is of great importance, taking into account that a question of disqualification under Section 111 of the Act of 1994 is to be referred to the authority who would decide, that too in the manner the Government may by law provide. In other words, the authority who is competent to decide, cannot assume jurisdiction on its own unless there is a reference made to the authority the question of disqualification of a member of a Panchayat body. At this stage, it is apposite to observe

that in contradistinction to Article 103 and Article 192 of the Constitution of India, the reference to the question of disqualification is directly to be made to the President of India and the Governor respectively.

36. Clause (i) of Section 111(1) of the Act of 1994 as already stated above is a case of disqualification subsequent to a person elected as a Member of Panchayat and it leads to an Automatic vacation of the seat.

37. Sub-Section (2) of Section 111 of the Act of 1994 further adds additional grounds of disqualification beyond what is mentioned in Section 111(1) of the Act of 1994.

38. It is also very pertinent to mention that Sub-section (2) of Section 111 of the Act of 1994 was inserted vide the amendment made to the Act of 1994 w.e.f. 19.03.2018. It is also relevant to mention that the present Clauses (b) & (c) of Section 111(2) of the Act of 1994 were substituted by the Assam Panchayat (Amendment) Act, 2023 which came into operation w.e.f. 19.10.2023. Clause (f) of Section 111(2) of the Act of 1994 was inserted vide the Assam Panchayat (Amendment) Act, 2023 w.e.f. 19.10.2023.

39. Clause (a) of Section 111(2) of the Act of 1994 stipulates that when a person who has more than 2 (two) living children from a

single or multiple partners, he/she shall not be elected or co-opted and remain as President, Vice-President, or Member of the Zilla Parishad, Anchalik Panchayat, and Gaon Panchayat. The proviso to the said Clause, however, stipulates that the said provision shall not be applicable in respect to those persons who have more than 2 (two) children prior to the date of commencement of the Act. It is of importance to note that the disqualification mentioned in Clause (a) of Section 111(2) of the Act of 1994 denotes a disqualification which a candidate incurred at the time of submission of the nomination paper or even subsequent to the election. For example, a candidate who has more than two children of which one or some are born after 19.03.2018 would be disqualified to contest elections. At the same time if a candidate has two children at the time of the election and thereupon another child is born, the candidate would be disqualified and cannot remain as a Member of the Panchayat. This distinction is very material to understand the present analysis.

40. Clauses (b) & (c) of Section 111(2) of the Act of 1994 relates to educational qualifications. A perusal of the said provisions show that a candidate has to have certain educational qualifications for being able to contest as a Member of the Panchayat. In other words, without the basic educational qualifications stipulated, a candidate cannot contest the Panchayat elections or be elected as a Member of the Panchayat. There cannot be a case of disqualification subsequent to the election

in respect to a member of Panchayat under Clauses (b) & (c) of Section 111(2) of the Act of 1994.

41. Clause (e) of Section 111(2) of the Act of 1994 stipulates that no person shall be elected or co-opted and remain as President, Vice-President, or Member of the Zilla Parishad, Anchalik Panchayat, and Gaon Panchayat who does not have a functional sanitary toilet in his/her residence. The said disqualification stipulates that prior at the time of submission of the nomination paper, the person contesting the elections has to have a functional sanitary toilet in his/her residence else the person would incur disqualification to contest the elections. It also means that subsequent to the elections if the member of the Panchayat does not continue to have a functional sanitary toilet after having been elected, the Member of Panchayat would be disqualified to remain as a Member of the Panchayat.

42. Clause (f) of Section 111(2) of the Act of 1994 is of relevance, and the same is reproduced herein under:

“(f) who either by himself or herself or his or her spouse has violated the legal age of marriage under the Prohibition of Child Marriage Act, 2006.”

43. A perusal of the above quoted Clause would show that no person shall be elected or co-opted and remain as President, Vice-President or Member of the Zilla Parishad, Anchalik Panchayat, and Gaon Panchayat who either by himself or herself or his or her spouse

violated the legal age of marriage under the Prohibition of Child Marriage Act, 2006.

44. The disqualification coming within the purview of Section 111(2) (f) of the Act of 1994 could be either a disqualification at the time of submission of the nomination paper or a disqualification that occurred subsequent to the elections. For example, a candidate, who either by himself or herself or his or her spouse, violated the legal age of marriage under the Prohibition of Child Marriage Act, 2006 would be disqualified to contest the elections. At the same time a Member of a Panchayat, if he or she marries subsequent to the elections and his or her spouse is below the legal age of marriage under the Prohibition of Child Marriage Act, 2006 cannot remain or continue as a Member of the Panchayat. There is a fundamental distinction between a disqualification at the time of submission of the nomination paper as well as a disqualification subsequent to the election insofar as Section 111(2)(f) of the Act of 1994 is concerned.

45. Sub-Section (3) of Section 111 of the Act of 1994 relates to disqualifications in the case of Zilla Parishad, which however this Court in the present proceedings is not concerned with. Be that as it may, it is very pertinent to note that Sub-Clause (ii) of Section 111(3) of the Act of 1994 stipulates that the District Commissioner shall have the absolute power in deciding cases pertaining to disqualification of

members on the ground of defection. The Section 111(3) of the Act of 1994 was also inserted vide the Assam Panchayat (Amendment) Act, 2023 w.e.f. 19.10.2023.

46. In the foregoing paragraphs, this Court dealt with Section 111(1) (h) of the Act of 1994 which stipulates that if any question arises as to whether a Member of the Panchayat is subject to any disqualification, the same shall be referred for decision of such Authority and in such manner as the Government may by law provide.

47. Rule 62 of the Rules of 1995 provides the prescription insofar as Section 111(2) of the Act of 1994. Rule 62 comes with the heading **"Conditions and Procedure of disqualification under sub-section (2) of Section 111 of the Act of 1994"**.

48. Rule 62(1) of the Rules of 1995 relates to the conditions and the procedure of disqualification, insofar as Section 111(2)(a) of the Act of 1994 is concerned. It is apposite to mention that the proviso to Section 111(2)(a) of the Act of 1994 receives clarity by virtue of Rule 62(1)(b) of the Rules of 1995 which mentions that the disqualification contained in Section 111(2)(a) of the Act of 1994 shall only be applicable if after 19.03.2018, the President, Vice-President, or Member of the Zilla Parishad, Anchalik Panchayat, and Gaon Panchayat gives birth to an additional child.

49. Rule 62(2) of the Rules of 1995 is in reference to the disqualification under Section 111(2)(b) & (c) of the Act of 1994. Rule 62(3) of the Rules of 1995 stipulates the Conditions and Procedure of disqualification in respect to Section 111(2)(e) of the Act of 1994.

50. Rule 62(4) of the Rules of 1995 is of relevance for the purpose of the instant case, as it refers to the Conditions and Procedure of disqualification under Section 111(2)(f) of the Act of 1994. It is relevant to take note of that Rule 62(4) of the Rules of 1995 was inserted vide the Notification No. ECF-596015/2 dated 24.12.2024. Clauses (a), (b) & (c) of Rule 62(4) of the Rules of 1995 being relevant for the purpose of the instant proceedings, are reproduced herein under:

“(a) subject to the provisions of the Act, at the time of filing of nominations, the candidates shall furnish affidavit regarding their age at the time of their marriage, failing which, concerned candidates shall be disqualified.

(b) The State Government or concerned District Authority shall remove any President, Vice President or Member of Zilla Parishad, Anchalik Parishad and Gaon Panchayat, if it is found that he or she or his or her spouse was underage at the time of marriage.

(c) The Gaon Panchayat Secretary on receipt of information of such underage or minor marriage in respect of President, Vice President or member of Gaon Panchayat shall inform the matter to the concerned Block Development Officer, who in turn shall inform the concerned District Commissioner through the Chief Executive Officer, Zilla Parishad. The concerned District Commissioner shall examine the matter and on

establishment of facts, shall remove the President, Vice President or member of Gaon Panchayat concerned accordingly with a intimation to the State Government as well as State Election Commission.”

51. From a perusal of the above-quoted Rule, it shows that subject to the provisions of the Act of 1994, at the time of filing nominations, the candidates are required to furnish affidavit regarding their age at the time of their marriage, failing which, the concerned candidates shall be disqualified. The said Sub-Rule 62(4)(a) of the Rules of 1995 makes it clear that at the time of filing nominations, the candidates are required to furnish affidavit regarding their age at the time of marriage and non-furnishing of such affidavit would lead to disqualification. The said Sub-Rule, however, does not say anything about the disclosure the age of the candidate's spouse.

Clause (b) of Rule 62(4) of the Rules of 1995 is in reference to Article 243-F(2) of the Constitution and Section 111(1)(h) of the Act of 1994 inasmuch as the Authority to remove the President, Vice-President, or Member of the Zilla Parishad, Anchalik Panchayat, or Gaon Panchayat is conferred upon the State Government or the concerned District Authority. Rule 62(4)(c) of the Rules of 1995 is also in reference to Section 111(1)(h) of the Act of 1994 thereby prescribing the manner in which the Reference would be made to the Authority who would decide the question of disqualification. A perusal of the said Sub-Rule reveals that the Gaon Panchayat Secretary, on

receipt of information of such underage or minor marriage, in respect of the President, Vice-President, or Member of the Gaon Panchayat shall inform the matter to the concerned Block Development Officer, who in turn shall inform the concerned District Commissioner through the Chief Executive Officer of the Zilla Parishad. The prescription contained in Rule 62(4)(c) of the Rules of 1995 does not prescribe that the District Commissioner on its own can exercise the jurisdiction of the Authority. Rather it stipulates that upon the reference made in the manner stipulated in Rule 62(4)(c) of the Rules of 1995, the District Commissioner can exercise the jurisdiction.

52. A reading of Rule 62(1) (f), (g) & (h), Rule 62(3) (c), (d) & (e) as well as 62(4)(c), (d), and (e) of the Rules of 1995 stipulates the manner in which the question of disqualification of a member of a Panchayat body can be referred for decision to the Authority. In other words, the Parliament, the State Legislature as well as the State Government were of the view that the disqualification proceedings have to be referred to the Authority for decision, and not that the Authority competent to decide could assume such jurisdiction on its own. The question therefore arises as to whether the Respondent No. 4 could have at all initiated an enquiry and passed the impugned order without a Reference made in terms with Rule 62(4)(c) of the Rules of 1995. The answer has to be in the negative for the simple reason that when the prescription mentions a particular mode, the

same ought to be followed.

53. Be that as it may, the question still looms as to whether the District Commissioner had the competence and jurisdiction to pass the impugned order *de hors* the fact that the District Commissioner could not have assumed jurisdiction without a reference being made.

54. For deciding the said question, it is necessary to take into consideration some of the provisions of the Constitution of India, Act of 1994, Act of 1951, Conduct of Election Rules, 1961 and the Rules of 1995. Before proceedings on the said analysis, this Court finds it relevant to quote Rule 45Z of the Rules of 1995.

“45Z. Applicability of Central Rules, statutory orders, etc:- (1) *Without prejudice to the foregoing provisions, wherever no specific provisions with respect to the use of electronic voting machines at elections is made, the corresponding provisions related to voting in these rules shall mutatis mutandis apply in such cases.*

(2) *Without prejudice to the foregoing provisions, wherever no specific provisions are made in these rules, the provisions of the Conduct of Elections Rules, 1961 and the Representation of People Act, 1951 (Act No. 43 of 1951) shall apply from time to time and the instructions, statutory orders and clarifications issued by the Election Commission of India shall mutatis mutandis apply for the cases under these rules.”*

In the backdrop of the above, let this Court analyze the provisions of the Constitution, the Act of 1994, Act of 1995, Conduct of Election Rules, 1961 as well as the Rules of 1995.

55. Section 114 of the Act of 1994 stipulates that the

superintendence, direction and control of the preparation of the Electoral roll for and the conduct of all elections to the Panchayat shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor. Sub-Section (4) of Section 114 of the Act of 1994 stipulates that the various officers, i.e the Returning Officers, Assistant Returning Officers, Presiding Officers, Polling Officers, and any other officer appointed under the Act of 1994 and any Police Officers designated for the time being by the State Government for the conduct of the Panchayat Election shall be deemed to be on deputation to the State Election Commission for the period commencing on and from the date of the Notification calling for the Panchayat Election and ending with the date of declaration of the results of the election and such officers shall, during this period be subject to the control, superintendence, and discipline of the State Election Commission. Sub-Section 5 of Section 114 of the Act of 1994 stipulates that subject to the provisions of the Constitution of India, the State Legislature may by law, make provision with respect to all matters relating to, or in connection with the Election to the Panchayats.

At this stage, it is apposite to observe that Section 114 of the Act of 1994 has its roots embedded in Article 243-K of the Constitution. Clause (4) of Article 243-K of the Constitution empowers the State Legislature to make provisions with respect to all matters relating to

or are in connection with, elections to the Panchayats.

It is under such circumstances, various provisions have been made in the Act of 1994 which relates to or in connection with elections to Panchayat.

56. Chapter-XI of the Act of 1994 is with the heading "Miscellaneous". Section 127 of the Act of 1994 stipulates that the Government shall constitute such Panchayat Election Tribunals as may be necessary, on the recommendation of the High Court to dispose of all direct election petitions challenging election under the Act of 1994. Section 127A to Section 127P of the Act of 1994 relates to various offences and penalties. Section 127Q confers jurisdiction upon the competent Court to try any offence under the Act of 1994. Section 127R of the Act of 1994 stipulates that such offences under the Act of 1994 may be tried summarily in the manner provided for summary trial under the Code of Criminal Procedure, 1973.

57. Section 129 of the Act of 1994 is of relevance and as such, the same is reproduced herein under:

*"129. **Bar to interference by Courts in electoral matters:-** Notwithstanding anything contained in this Act-*

(a) the validity of any law relating to the delimitation of constituencies on the allotment of seats to such constituencies, made under Article 243 of the Constitution of India shall not be called in question in any Court;

(b) *no election to any Panchayat shall be called in question except by an election petition presented within sixty days from the date of declaration of election results to the Tribunal constituted under Section 127.”*

58. For the purpose of the present dispute, this Court is not concerned with Section 129(a) of the Act of 1994. Clause (b) of Section 129 of the Act of 1994 specifically mandates that no election to any Panchayat shall be called in question except by way of an election petition presented within 60 (sixty) days from the date of declaration of the election results to the Tribunal constituted under Section 127 of the Act of 1994. In other words, an election to any Panchayat can be called in question only by way of an election petition, that too, presented within 60 (sixty) days from the date of declaration of the results to the Election Tribunal. It is also very pertinent to take note of the fact that Section 129 of the Act of 1994 provides opportunities to the person aggrieved to challenge the election result, but in doing so, an election petition has to be presented within 60 (sixty) days before the Tribunal.

59. The edifice of Section 129 of the Act of 1994 is in Article 243-O of the Constitution of India which bars interference by Courts in electoral matters. The said Article, being relevant, is reproduced herein under:

*“243O. **Bar to interference by courts in electoral matters.**—Notwithstanding anything in this Constitution,—*

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243K, shall not be called in question in any court;

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State."

60. Article 243-O of the Constitution of India as a whole starts with a non-obstinate Clause i.e. "Notwithstanding anything in this Constitution", and in terms with Clause (b) of Article 243-O no election to any Panchayat shall be called in question except by an election petition presented to such Authority and in such manner as is provided for by or under any law made by the Legislature of the State. The law made by the Legislature of the State in the instant case would be the Act of 1994. At this stage, it is also apposite to observe that Section 141 of the Act of 1994 empowers the State Government to make Rules. It is in exercise of the powers under Sub-Section(1) of Section 141 of the Act of 1994, that the Rules of 1995 were made. The Rules of 1995 deal inter alia with delimitation of the Panchayat constituencies as well as elections to the Panchayats including elections to the President, Vice President at any of the levels of the Panchayats.

61. Rule 45Z of the Rules of 1995 has been already quoted herein above. By the said Rule, the provisions of the Act of 1951, the

Conduct of Election Rules, 1961, the instructions, statutory orders and clarifications issued by the Election Commission of India are adopted where there is no specific provision provided in the Rules.

62. This Court, at this stage would take note of Article 329(b) of the Constitution of India, which is also *pari materia* to Article 243-O of the Constitution of India and to some extent to the provisions of Section 129 of the Act of 1994. The observations of the Supreme Court in the case of ***N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency & Others*** reported in **(1952) 1 SCC 94** wherein the Bench comprising of 6 (six) Hon'ble Judges of the Supreme Court deliberated upon as regards the scope of Article 329(b) of the Constitution of India is of relevance.

63. His Lordship Justice Fazl Ali, J., (as His Lordship then was) authoring the judgment observed that even the invocation of the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India, in respect to a challenge to an election, would be contrary to the Scheme of Part XV of the Constitution of India and the Act of 1951. His Lordship opined that Article 329(b) of the Constitution of India was apparently enacted to prescribe the manner in which and the stage at which, the grounds which may be raised under law to call an election in question could be urged. It was observed that by necessary implication from the language of Article

329(b) of the Constitution of India read with the grounds mentioned in the Act of 1951, such grounds cannot be urged in any other manner, at any other stage, or before any other Court. It was further observed that if the grounds on which an election can be called in question could be raised at an early stage and errors, if any, are rectified, there would be no meaning in enacting a provision like Article 329(b) of the Constitution of India and in setting up a Special Tribunal. Any other meaning ascribed to the words used in Article 329(b) of the Constitution of India would lead to anomalies which the Constitution could not have contemplated, one of them being that conflicting views might be expressed by the High Court at pre-polling stage and by the Election Tribunal, which is an independent body, at the stage when the matter is brought before it.

64. This Court also finds it pertinent to take note of the observations of His Lordship V.R. Krishna Iyer, J., (as His Lordship then was), in the judgment of the Constitution Bench of the Supreme Court in the case of ***Mohinder Singh Gill (supra)***, wherein His Lordship observed that an election dispute is not like an ordinary lis between private parties. The entire electorate is vicariously and not inertly, before the Court. His Lordships observed that election disputes is a species of cases which can be called as collective litigation, where judicial activism assures justice to the constituency, safeguards the purity of the system and decides the rights of the candidates.

65. In both the judgments i.e. in the cases of ***N.P. Ponnuswami (supra)*** and in ***Mohinder Singh Gill (supra)***, the Supreme Court categorically opined that the result of an election can be challenged only by way of an election petition thereby presenting it to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature. Insofar as Article 329(b) of the Constitution of India is concerned, the appropriate legislation so made is the Act of 1951.

66. It is the opinion of this Court that insofar as Article 243-O of the Constitution of India is concerned, the same principles would apply. In other words, election to a Panchayat can only be called in question by way of an election petition and taking into account Section 129 of the Act of 1994, such election can be called in question by presenting an Election Petition to the Election Tribunal constituted under Section 127 of the Act of 1994. The above opinion of this Court finds support from the judgment of the Supreme Court in the case of ***Dravida Munnetra Kazhagam (DMK) Vs. State of Tamil Nadu*** reported in ***(2020) 6 SCC 548*** as well as ***State of Goa & Another Vs. Fouziya Imtiaz Shaikh & Another*** reported in ***(2021) 8 SCC 401***.

67. Now in the above backdrop, the question arises as to what disputes come within the meaning of calling in question an election. This aspect is important inasmuch as such dispute can only be

decided by the Election Tribunal and not by any other Court or Authority.

For understanding the said aspect, this Court finds it relevant to note the interplay between Article 243-F of the Constitution and Section 111 of the Act of 1994 with Article 243-O of the Constitution, Section 129 of the Act of 1994, the Rules of 1995 and the Act of 1951.

68. In the previous segments of the instant judgment, this Court had dealt with Article 243-F of the Constitution wherein it is stipulated that a candidate would be disqualified for being chosen as, and for being a member of the Panchayat if the candidate suffers disqualification in terms with Article 191 of the Constitution as well as Section 111 of the Act of 1994 wherein the disqualifications mentioned may be solely,

- (i) occurring at the time of election or,
- (ii) at the time of the election or subsequent to the elections; or
- (iii) subsequent to the elections.

69. Similarly, a reading of Article 191 of the Constitution would show that the disqualifications mentioned in Sub-Clauses (a) to (d) of Article 191(1) of the Constitution can be at the time of election i.e. submission of the nomination paper or subsequent to the election. It

is also apposite to mention that Article 191(1)(e) of the Constitution stipulates that a candidate may be disqualified by or under any law made by the Parliament. In that respect, reference to Chapter III of the Act of 1951 may be made which refers to various forms of disqualifications which can occur at the time of election i.e. submission of the nomination paper or subsequent to the elections.

70. At this stage, it is also apposite to take note of Rule 22 of the Rules of 1995 which stipulates "Filing and Scrutiny of Nomination Paper Form IIA and IIB". A perusal of the said Rule and more particularly Rule 22(1) of the Rules of 1995 stipulates that any person whose name appears in the list of voters of any of the constituencies of a Gaon Panchayat or Zilla Parishad as published under Rule 11 of the Rules of 1995 and who is not disqualified under Section 111 of the Act of 1994 may be nominated as a candidate from the concerning Zilla Parishad or Gaon Panchayat Constituency as the case may be.

The said Sub-Rule also stipulates that the nomination paper be delivered either by the candidate or by his/her proposer to the Officer authorized by the Deputy Commissioner or the Sub-Divisional Officer as the case may be.

Sub-Rule (2) of Rule 22 of the Rules of 1995 is very relevant for the purpose of the present analysis and as such the same is reproduced herein under:

“(2) The Officer as may be authorised under sub-rule (1), shall not be below the Gazetted rank and shall be appointed with prior approval of the State Election Commission. Such Officer shall-

- (a) examine the nomination papers on the date, time and place notified for the purpose under the Rule;*
- (b) give the candidate or his proposer reasonable opportunity to examine the nomination paper and shall decide on the spot, the objections, if there be any, by summary enquiry. He may either on his own initiative or an objections raised, reject any nomination on any of the following grounds-*
 - (i) that the candidate is not qualified under the provisions of the act;*
 - (ii) that he is disqualified from being chosen to fill the office or that he is disqualified since requisite amount of security deposit has not been paid;*
 - (iii) that there has been failure to comply with any of the provisions of these Rules; and*
 - (iv) that the signature or thumb-impression of the candidate or the proposer is not genuine.*

Provided that nothing in sub-clauses (iii) and (iv) above shall be deemed to authorise the rejection of the nomination paper of any candidate on the ground of irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of other nomination paper in respect of which no irregularity has been committed.”

71. A perusal of the above quoted Sub-Rule shows that the officer as authorized under Sub-Rule (1) of Rule 22 of the Rules of 1995 shall examine the nomination paper. The Officer further also shall by

affording reasonable opportunity to the candidate or his/her proposer decide the objections to the nomination paper and if necessary by carrying out a summary enquiry. The Officer shall also examine as to whether the candidate is qualified or the candidate is disqualified from being chosen to fill the office. The officer is authorized to reject the nomination if the candidate amongst others is found to be disqualified. This Sub-Rule(2) of Rule 22 of the Rules of 1995 is akin to Section 36 of the Act of 1951.

From the above, it would show that the Officer Authorized is competent to either accept the nomination or reject the nomination for varied reasons including on an examination as to whether the candidate is disqualified or not. The bar contained in Article 243-O of the Constitution which is similar to Article 329(b) of the Constitution as well as Section 129 of the Act of 1994, do not permit the candidate or any person aggrieved to assail the acceptance of the nomination paper or rejection of the nomination paper unless the elections are over. The said provide further mandate challenging the said aspect by way of an election petition to be submitted before the Election Tribunal within 60 (sixty) days from the date of declaration of the result. At this stage, it is of importance to again refer to the judgment of the Supreme Court in the case of ***N.P. Ponnuswami (supra)*** wherein the 6 (six) Hon'ble Judges of the Supreme Court per curiam held that the word "election" has been used in Part-XV of the Constitution of

India in a wide sense to connote the entire procedure to be gone through to return a candidate to Legislature. It was also observed that improper rejection of the nomination paper is a part of the election process and challenge to the same is only permissible by way of an election petition and not by way of a writ petition. It is also important to note that improper acceptance of a nomination of a returned candidate or improper rejection of a nomination are grounds available under Section 100 of the Act of 1951 for declaring an election void.

72. In the backdrop of the above observations of the Supreme Court, it is relevant to note that the Act of 1994 as well as the Rules of 1995 do not mention what are the grounds to be urged for declaring an election void. However, in view of Rule 45Z of the Rules of 1995, the Act of 1951 has been adopted to fill in those gaps where specific provisions have not been made in the Rules of 1995. Under such circumstances, Section 100 of the Act of 1951 would apply as regards an election petition to be filed calling in question an election and the grounds mentioned in Section 100 of the Act of 1951 can only be urged in an election petition for declaration of an election to be void. In this regard special reference can be made to Section 100(1)(d)(i) of the Act of 1951 which stipulates where the results of an election insofar as it concerns the returned candidate have been materially affected by improper acceptance of nomination would be a ground for declaring an election void.

73. Now therefore the pivotal question is, if a candidate who incurred a disqualification at the time of submitting the nomination that is at the time of elections by virtue of Article 191 of the Constitution of India or Chapter-III of the Act of 1951 or Section 111 of the Act of 1994 but the nomination paper was accepted by the Officer Authorized to do so, can this aspect be looked into by the Authority to whom a reference is made to decide the question of disqualification?

74. The answer has to be in the negative inasmuch as a candidate who had incurred disqualification at the time of the election i.e. submission of the nomination paper, but the nomination paper was accepted would be a case of an improper acceptance of a nomination. This improper acceptance of the nomination being a part of the election process, the same has to be challenged by way of an election petition by presenting the same before the Election Tribunal within the period of 60 (sixty) days from the date of declaration of the results. Failure to challenge the improper acceptance of a nomination by way of an election petition would result in the returned candidate continuing to remain as a Member of the Panchayat. This Court at this stage finds it relevant to again refer to the judgment of the Supreme Court in the case of ***Consumer Education and Research Society (supra)*** wherein the Supreme Court at paragraph No. 50 makes the aforesaid principles absolutely clear. Paragraph No. 50 of the said

judgment is reproduced herein below:

“50. Thus, it is clear that where a person was under a disqualification at the time of his election, the provisions of Articles 101(3)(a) and 103 will not apply. He/She will continue as a Member unless the High Court in an election petition filed on that ground, declares that on the date of election, he/she was disqualified and consequently, declares his/her election to be void. It follows, therefore, that if an elected candidate was under a disqualification when he was elected, but no one challenges his/her election, he/she would continue as a Member irrespective of the fact that he/she was under a disqualification when elected.”

75. In the instant case, even assuming that the Petitioner had incurred disqualification on account of having married below the legal age as provided under the Prohibition of Child Marriage Act, 2006, the said disqualification was not taken into account while scrutinizing the nomination paper of the Petitioner by the Officer Authorized and consequently, the Petitioner contested the election and was elected as the Member of the concerned Gaon Panchayat. Under such circumstances, the case against the Petitioner at best would be a case of improper acceptance of her nomination paper. The improper acceptance of the nomination is a ground for declaring the election void and the same has to be challenged by way of an election petition presented to the Election Tribunal within 60 (sixty) days from the date of the result of the elections. The Authority under Article 243-F(2) of the Constitution of India as well as Section 111(1)(h) of the Act of 1994 cannot usurp the jurisdiction of the Election Tribunal to decide a

question of disqualification which the candidate incurred at the time of election i.e. at the time of submission of the nomination paper. The jurisdiction of the Authority under Article 243-F(2) of the Constitution as well as Section 111(1)(h) of the Act of 1994 would be only in respect to disqualification which occurred subsequent to the elections.

76. In the instant case, the marriage of the Petitioner as per the Petitioner was 05.01.2015. The Respondent No. 4 opined that the marriage of the Petitioner must have been prior to 06.01.2013 as the Petitioner's first child was born on 06.01.2013. Even assuming that the said findings are correct as observed by the Respondent No. 4, the Petitioner would be deemed to have incurred disqualification on the date of the elections but in spite of the same, the nomination of the Petitioner was accepted by the Officer Authorized and the Petitioner was permitted to contest the elections. The Petitioner contested the elections and returned as elected. The improper acceptance of the Petitioner's nomination being a ground available to declare an election void, the same could only have been challenged by filing an election petition within 60 (sixty) days from the date of the declaration of the result. The Respondent No. 4 had no authority or jurisdiction to decide a disqualification which was there at the time of election i.e. submission of the nomination paper and as such the impugned order dated 09.12.2025 is without authority and jurisdiction.

The above answers the first point for determination.

SECOND POINT FOR DETERMINATION

77. The second point for determination pertains to, as to whether, the impugned order dated 09.12.2025 suffers from patent illegality and perversity requiring interference from this Court.

78. In view of the first point for determination answered, it is not necessary for this Court to decide the second point for determination as the District Commissioner, Goalpara did not have the jurisdiction and authority to decide the question of disqualification of the Petitioner inasmuch as the disqualification, if any as alleged was at the time of the election of the Petitioner and not subsequent to the election of the Petitioner.

79. Under such circumstances, this Court need not decide on the question as to whether the impugned order suffers from perversity or patent illegality inasmuch as the said impugned order is passed by an authority having no jurisdiction or authority.

THIRD POINT FOR DETERMINATION.

80. The impugned order dated 09.12.2025 cannot be sustained in law as it is an order passed by an Authority without jurisdiction and accordingly is required to be set aside and quashed. Further to that, all consequential actions on the basis of the impugned order dated

09.12.2025 cannot also be sustained in law and are liable to be set aside and quashed.

CONCLUSION

81. The instant writ petition, therefore, stands disposed of with the following observations and directions:

- (i) The impugned order dated 09.12.2025 is set aside and quashed.
- (ii) All consequential action(s) based upon the impugned order dated 09.12.2025 is also set aside and quashed.
- (iii) There shall be no order as to costs.

JUDGE