

WP(C) 6550/2007

BEFORE

HON'BLE THE MR. JUSTICE AMITAVA ROY

Heard Mr. Saikia, learned Counsel for the petitioner and Ms. Phukan, learned State Counsel for the respondents 1 to 5. Also heard Mr. Mahmud, learned Standing Counsel, Assam State Election Commission (hereafter referred to as the Commission).

The petitioner is before this Court challenging the corrigendum issued after the publication of the Final Voters' List in respect of No. 7 Muamari Puthimari Zilla Parishad by the concerned Registration Officer. Thereby the respondents 6 and 7 are shown to be voters of No. 1 Gerimari Village under the 43 Muamari Gaon Panchayat. The petitioner has alleged that the names of the above named respondents have been included in the said voters list without deleting their names from the voters' list of No. 67 Mangaldoi (Scheduled Caste) Legislative Assembly Constituency. The petitioner has further alleged that though he has submitted a representation before the Deputy Commissioner, Darrang, Mangaldoi, intimating him of the above anomalies, the said representation has not been attended to till date.

Mr. Saikia has reiterated the above facts.

Mr. Mahmud in reply has submitted that as the list of validly nominated persons in the meantime has been published on 15/12/2007 and in terms of the calendar of dates published by the Commission the elections are notified on 27/11/2007, no interference by this Court at this stage is called for. I have extended my thoughtful consideration to the rival submissions. The pleaded facts as well as the competing arguments have been noticed. Clause (b) of Article 243 O mandates that 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.

The same bar finds reiteration in clause (b) of Section 129 limiting the challenge only by an election petition to be presented within 60 days from the date of declaration of the results to the Tribunal constituted under Section 127.

The Apex Court in N.P. Ponnuswami versus the Returning Officer, Namakkal Constituency, Namakkal, Salem District and others, AIR (39) 1952 SC 64, while assaying the connotation of the word election appearing in Article 329(b) of the Constitution of India prescribing the same bar vis- -vis the elections to the either House of Parliament or the Legislature of the State as the case may be propounded that the said expression has been used in the wide sense to comprehend the entire procedure to be gone through to return a candidate to the Legislature. It held that the use of the expression conduct of elections in Article 324 in Article 324 specifically points to the wide meaning and that the said meaning can also be read consistently into the other provisions, which occur in Part XV including Article 329(b). Their lordships held that the scheme of Part XV of the Constitution and the Representation of the People Act seems to be that any matter which has the effect of vitiating an election should be brought up only at the appropriate stage in an appropriate manner before a special Tribunal and should not be brought up at an intermediate stage before any Court.

In view of the emphatic pronouncement rendered by the Apex Court in N.P. Ponnuswami, supra, I am of the unhesitant opinion that the instant petition under Article 226 of the Constitution of India is not maintainable in law being in derogation of the bar contained in Article 243 O the Constitution of India as well as Section 129(b) of the Act. The exercise which forms the subject matter of assailment in the instant proceeding is indubitably an integral and inextricable segment of the process of election to the Panchayat Institutions and is unequivocally within the purview of the bar. The petition is thus dismissed. No costs.