

**(2025) 12 GAU CK 0074**

**Gauhati HC**

**Case No:** WP(C) Of 5918 Of 2025

Burhan Ali

APPELLANT

Vs

State Of Assam And 15 Ors

RESPONDENT

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**Date of Decision:** Dec. 8, 2025

**Acts Referred:**

- Assam Panchayat Act, 1994- Section 6, 18
- Assam Panchayat (Constitution) Rules, 1995- Rule 46(3)

**Hon'ble Judges:** Sanjay Kumar Medhi, J

**Bench:** Single Bench

**Advocate:** P.P. Dutta, H. Sharma, P. Thapa, S. Dutta, M.K. Hussain, A.M. Ahmed, A. Bhattacharjee

**Final Decision:** Allowed

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### **Judgement**

Sanjay Kumar Medhi, J

1. An Order dated 10.09.2025 passed by the District Commissioner, Biswanath by which the 1st meeting of the 14 No. Ghiladhari Mukh Gaon Panchayat has been cancelled is the subject matter of challenge in this writ petition. In the said meeting, the petitioner was elected as the President of the Gaon Panchayat.

2. The facts, briefly stated are that the petitioner is an elected member of the aforesaid Gaon Panchayat, the elections of which was held on May, 2025. The 1st meeting was accordingly convened on 27.06.2025 and admittedly, there were 6 members present in which the petitioner was elected as the President and another incumbent, amongst the 6 members was elected as the Vice President. The private respondent nos. 8, 9, 10 and 11 herein had however submitted a representation against such election before the District Commissioner on 04.07.2025, mainly, on the contention that the quorum was not fulfilled. The complaint states that there should be 7 (seven) members present.

3. As the said representation was not considered and disposed of, the private respondent nos. 8, 9, 10 and 11 had instituted WP(C)/3954/2025. This Court vide order dated 18.07.2025 while issuing notice had observed that pendency of the writ petition shall not be a bar for disposal of the representation. Basing upon such observations, the impugned order has been passed on 10.09.2025 whereby the 1st meeting was cancelled on the ground of lack of quorum. Subsequently, vide an order dated 17.09.2025, the aforesaid writ petition was closed as infructuous. It is the aforesaid order dated 10.09.2025 which is the subject matter of challenge, as indicated above.

4. I have heard Shri P.P. Dutta, learned counsel for the petitioner. I have also heard Shri H. Sharma, learned Addl. Senior Government Advocate, Assam for the official respondents, Ms. P. Thapa, learned counsel appearing on instructions of Shri S. Dutta, learned Standing Counsel, P&RD, Shri M.K. Hussain, learned counsel for the respondent nos. 8 & 11, Shri A.M. Ahmed, learned counsel for the respondent nos. 9 and 10 and Shri A. Bhattacharjee, learned counsel for the respondent nos. 12 to 16.

5. Shri Dutta, the learned counsel for the petitioner has formulated his arguments mainly on two grounds. Firstly, he has contended that the impugned order has been passed in gross violation of the principles of natural justice. Secondly, he has contended that there has been gross misinterpretation of the provisions of law leading to the impugned action.

6. Elaborating his submissions, the learned counsel for the petitioner has contended that the impugned action culminating in the order dated 10.09.2025 has been passed without giving any opportunity to the petitioner. He submits that the petitioner was in dark when the decision was taken and thereby, the principles of natural justice has been grossly violated.

7. On the second ground, the learned counsel for the petitioner has drawn the attention of this Court to the provisions of Rule 46 (3) of the Assam Panchayat (Constitution) Rules, 1995 (herein after called the Rules) and has submitted that to hold the 1st meeting, there is a requirement of minimum 1/3 rd of the total numbers of members and it is not in dispute that the total number of members present in the meeting held on 27.06.2025 was 6. He has submitted that there has been a mechanical application of mind and the impugned order has been passed resulting in grave miscarriage of justice.

8. Shri Sharma, the learned Senior Government Advocate has however submitted that the aspect of violation of principles of natural justice would not come in the way of the present challenge inasmuch such decision was taken pursuant to an observation made by this Court while issuing notice vide order dated 18.07.2025 in WP(C)/3954/2025. As regards the second ground of challenge, the learned State Counsel, by referring to the records has submitted that the decision making authority had interpreted that in absence of 1/3rd or more members, the meeting is

required to be postponed.

9. Supporting the impugned decision, both Shri Hussain and Shri Ahmed, the learned counsel for the respondent nos. 8, 9, 10 and 11 have submitted that a proper and correct interpretation of Rule 46 (3) of the Rules is that if 1/3rd or more members are absent, the meeting cannot be held and therefore, there is no error in the impugned order dated 10.09.2025. They have also submitted that no prejudice would be suffered by the petitioner if a fresh meeting is conducted wherein the petitioner would have all the opportunity to contest for the post of President.

10. Shri A. Bhattacharjee, the learned counsel for the respondent nos. 12 to 16 has however supported the petitioner. He has submitted that his clients were present in the meeting held on 27.06.2025 and the quorum was complete in which the petitioner was duly elected. He has also highlighted that the aspect of presence of 6 numbers of elected members is not disputed by anyone. He has also referred to Section 18 of the Assam Panchayat Act, 1994 which lays down the aspect of quorum and procedure. He has submitted that as per Section 18 (1) of the Act, the quorum has been specified to be 1/3rd of the total number of Members.

11. Shri Hussain, the learned counsel for the respondent nos. 8 and 11 has however refuted the aforesaid submissions made by Shri Bhattacharjee and has submitted that the provisions of Section 18 of the Act would come into operation only after the 1st meeting is held wherein the President, Vice President are elected and will have no application in the 1st meeting itself.

12. The rival submissions advanced by the learned counsel for the parties have been duly considered and the materials placed before this Court including the records in original by Shri Sharma, the learned Senior Government Advocate have been duly considered.

13. Before going into the grounds of challenge, it is to be noted that there is no dispute on the factual aspect that in the meeting held on 27.06.2025, 6 numbers of elected Ward members were present. The grievance of the petitioner qua the impugned order dated 10.09.2025 has been structured on two grounds indicated above, namely, violation of the principles of natural justice and misinterpretation of the statute holding the field, more specifically, Rule 46 (3) of the Rules.

14. With regard to the first ground of challenge, though it is correct that this Court while issuing notice vide order dated 18.07.2025 in WP(C)/3954/2025, had made an observation that pendency shall not be a bar for disposal of the representation, the question will arise as to whether such representation could have been disposed of without giving the petitioner an opportunity. The representation was in the nature of a complaint with regard to the election of the petitioner as President of the concerned Gaon Panchayat. Though the observation that there would be no bar for disposal of the representation was made by this Court, it was imperative for the adjudicating authority to give a proper opportunity to the aggrieved party which

admittedly was not done. In the considered opinion of this Court, there has been gross violation of the principles of natural justice as rights which had accrued to the petitioner vide the meeting held on 27.06.2025 has been taken away without giving any opportunity.

15. With regard to the second round of challenge, namely, the misinterpretation of the Rules, the said provisions of the Rules are required to be examined.

16. The aspect of quorum is provided under Rule 46 of the Rules of 1995. In this regard, Rule 46(3) and Section 18 of the Assam Panchayat Act may also be referred, the relevant portions of which are extracted hereinbelow:

Rule 46(3)

**If one third or more of the total number of members called to the meeting under sub-rule (1) are not present within an hour of the time fixed for the meeting, the Deputy Commissioner or the Sub-Divisional Officer as the case may be, or the Officer empowered in this behalf, shall adjourn the meeting pending fixation of another date by the Deputy Commissioner or the Sub-Divisional Officer as the case may be, not later than fifteen days of such meeting.**

**Section 18.**

**Quorum & Procedure- (1) The Quorum for a meeting of the Gaon Panchayat shall be one third of the total member of members.**

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17. Even if it is assumed that Section 18 of the Act may not have an application in the adjudication of the present case, Rule 46 (3) quoted above is itself sufficient to govern the 1st meeting of a Gaon Panchayat. The purpose of laying down a quorum is towards furtherance of the requirement to elect a President amongst the elected Ward members of a Gaon Panchayat. Section 6 of the Act of 1994 has undergone a major amendment in the year 2023 and the earlier position where the President was directly elected by the people has been amended and presently, such President is elected by the elected Ward members. The Rule 46 (3) quoted above lays down that there should be a requirement of at least 1/3rd of the total members for the 1 st meeting to elect the President and the Vice President. The interpretation sought to be advanced on behalf of the respondent nos. 8 to 11 cannot be construed to be a correct interpretation and cannot be said to be in sync with the scheme of the statute. As observed above, there is no dispute with regard to the fact that in the meeting held on 27.06.2025, 6 (six) members were present.

18. In the considered opinion of this Court, presence of 6 members would definitely fulfil the quorum as required under Rule 46 (3), even if, the aspect of Section 18 is overlooked.

19. This Court is therefore of the opinion that the view taken by the District Commissioner, as reflected in the impugned order dated 10.09.2025 is unsustainable in law and the same is accordingly set aside and quashed.

20. Consequently, it is directed that the petitioner be allowed to function as the President of the concerned 14 No. Ghiladhari Mukh Gaon Panchayat in accordance with law and for the tenure prescribed in the statute.

21. Writ petition accordingly stands allowed.

22. The original records are handed over back to the learned State Counsel.