

## **BEFORE THE PANCHAYAT ELECTION TRIBUNAL::::DHUBRI**

Misc. (E) Case No. 29/2013

Petitioner : Md. Motior Rahman  
S/o. Jalaluddin  
R/o. Vill- Ramriyer Kuti Part-II,  
P.S. Agomani, Dist. Dhubri, Assam

- Vs -

Opp. Parties : 1. The Assam State Election Commissioner  
Govt. of Assam, Dispur  
2. The Chief Election Commissioner,  
Dispur, Guwahati-781006, Assam.  
3. The Deputy Commissioner & R.O.  
for Panchayat Election 2012 -2013  
Dhubri Sub-Division  
4. Sri S.Z. Hazarika  
Addl. Deputy Commissioner & Asstt.  
R.O. for Panchayat Election 2012 -2013  
21 Agomoni ZPC, Dhubri.  
5. Sri N.F.H. Hussain  
Addl. Deputy Commissioner & Authorised  
A.R.O. (for recounting of votes)  
21 Agomani Z.P.C., Dhubri  
6. Sri S. Ali  
Addl. Deputy Commissioner, Dhubri.  
7. Md. Nazrul Hoque  
S/o. Karimullah Bepari  
R/o. Vill- Sagolia Pt-II  
P.S. Agomoni,  
Dist. Dhubri, Assam.  
8. Md. Mokbul Hussain  
S/o. Late Towaz Uddin Ahmed  
R/o. Vill.- Kaldoba Pt-I  
Dist. Dhubri, Assam  
9. Abu Taher Bepari  
M.L.A, Golakganj L.A.C.  
R/o. Vill. Sagolia Pt-II  
P.S. Agomoni  
Dist. Dhubri, Assam.

Present : Sri Rajib Goswami, AJS  
Tribunal Judge, Panchayat Election Tribunal,  
Dhubri

Sri N.I. Choudhury and Sri A.L. Bairagy Advocates for the petitioner.  
Sri K. A. Prodhani & Giasuddin Ahmed, Advocates for the respondents.

Date of Argument : 20-07-2016  
Date of Judgment : 12-08-2016

## **J U D G M E N T**

This is an application under Section 129 of Assam Panchayat Act, 1994 challenging the validity and legality of counting of votes in the Election for the 21 Agomoni Zila Parishad Member Constituency whereby the respondent No.7 was illegally declared elected on 16-02-2013 by a margin of 92 votes.

2. The petitioner had contested the election held on 12-02-2013 for the 21 Agomoni ZP Member Constituency as a nominee of BJP (Bharatiya Janata Party). Apart from the petitioner, respondents No.7 and 8 Nazrul Hoque and Mokbul Hussain had also contested the said Election for INC (Indian National Congress) and AIUDF (All Indian United Democratic Front) respectively. The counting was scheduled on 14-02-2013 and 15-02-2013 at 8 a.m. at B.N. College, Dhubri. After counting of votes on 14-02-2013 and 15-02-2013 in presence of Returning Officer and Counting Officer and in presence of candidates, Motior Rahman of BJP with 12,962 votes, the present petitioner was declared elected to 21 Agomoni Zila Parishad Member Constituency. Nazrul Hoque from INC, present respondent No.7 had polled 12,808 and Mokbul Hussain from AIUDF had polled 8,631 votes as per the Form XXIX D. When the result was about to be declared by the Asst. Returning Officer on 15-02-2013, respondent No.7 along with his supporters and along with respondent No.9, Abu Taher Bepari, MLA Golakganj LAC had stopped the announcement of the result. Respondents No.3 and 4 on the objection of respondent No.7 allowed recounting of votes by an order under Memo No.DDP 47/2013/4 (KA) dated 15-02-2013. After recounting respondent No.5 on 16-02-2013 declared respondent No.7, Nazrul Hoque elected to 21 ZP Member Constituency, Agomani by suppressing illegally 228 votes caste in favour of the petitioner and rejecting valid votes in favour of petitioner. The figure of the respondent No.7 in respect of votes polled enhanced to 12,826 depriving the petitioner from being elected to 21 Agomoni Zila Parishad Member Constituency. Hence the petition for following reliefs; (a) for declaring petitioner elected to 21 Agomoni Zila Parishad Member Constituency, who had polled 12, 962 votes (b) for setting aside the order for recounting. (c) for declaration that the order of recounting of votes by respondent No.3 as illegal and arbitrary etc.

3. Respondents No.1 to 6 filed a set of written statement and respondents No.7 and 9 filed another set of written statement and respondent No.8 had also filed yet another set of written statement. All of them inter alia denying the contention raised by the petitioner.

4. In the present context it is pertinent to consider the procedural aspect with regard to recounting of ballots on objection of respondent No.7 as described in written statement of respondents No.1 to 6. Respondent No.4 was the authorized ARO for counting of votes in respect of 21 Agomoni Zila Parishad Constituency. Four sealed trunks containing ballots of 21 Agomoni ZP Member Constituency were kept in strong room at BN College, Dhubri and had been opened in presence of both contesting candidates, respondent No.7, the petitioner as well as Observer for Panchayat Election, 2013 for Dhubri for recounting of votes on 16-02-2013. The candidate-wise lots of counted ballots were verified and recounted again in presence of counting agents of both INC and BJP. Earlier rejected ballots were also verified afresh and shown to candidates' Agents. Form 28 D was filled up with endorsement by counting Supervisors for each table and had been shown to Agents of three candidates present in each table who after satisfying themselves endorsed in the body of Form 28 (D) in each table for all six rounds of counting. 28 (D) Form was then sent to compilation table and the officer detailed for compilation of figures for 10 tables for each round and compiled figures had been shown in Form No.29 (D) which was duly endorsed by ARO after checking.

5. Total votes polled in 21 Agomoni Zila Parishad Constituency as per original counting was 35661 whereas as per recounting it was found to be 35678. Thus there was a difference of 17 votes in total votes polled for 21 Agomoni Zila Parishad Constituency. During recounting, 52 votes rejected in the original counting were accepted and total numbers of rejected votes stood at 1208 in place of 1260. Thus there was total 69 votes were accepted and allotted to all concerned candidates. 18 votes to Nazrul Hoque (INC), 24 votes to Mokbul Hussain (AIUDF) and 27 votes for Motior Rahman (BJP). Further, during comparison of Form XXIX (D) prepared (round-wise) during recounting with that of the original counting and consequently form 28 (D) of the concerned table was prepared by counting Supervisor. Two major variations had been noticed in the process.

(a) During original counting for Round No.3 (118-Sindurai GP) in table No.9 for PS No.118 (9) , 726 Moisachar LP School (Middle), the votes polled by AIUDF and BJP candidates were swapped in Form XXIX (D) wrongly by the counting Supervisor showing Nazrul Hoque, INC to have received 349 votes in the original counting while in the recounting he is found to have received 350 votes. Mokbul Hussain, AIUDF was shown to have received 124 votes in the original counting whereas, in the recounting Mokbul Hussain is found to have received 365 votes. Motior Rahman, BJP was shown to have received 366 in the original counting and in the recounting Motior Rahman, BJP was found to have received 125 votes.

(b) During original Counting for Round No.4 (119-Ranpagli GP) in Table No.1 i.e. for PS No.119 (1) – Baruapara M.V. School (R), the votes polled by AIDUF and BJP candidates were swapped in Form XXIX (D), wrongly by the counting Supervisor showing Nazrul Hoque, INC to have received 367 votes in the original counting while in the recounting he is found to have received 367 votes. Mokbul Hussain, AIUDF was shown to have received 295 votes in the original counting whereas, in the recounting Mokbul Hussain is found to have received 315 votes. Motior Rahman, BJP was shown to have received 310 in the original counting and in the recounting Motior Rahman, BJP was found to have received 296 votes.

6. Thus, 255 votes (241+14) were shown wrongly in favour of BJP candidate which were actually cast in favour of AIUDF candidate and as a result, the BJP candidate got the highest number of votes amongst 3 (three) candidates during original counting. After mistake was rectified during recounting and these 255 (241+14) votes were allotted to the AIUDF candidate (Respondent No.8) as these were cast in his favour, the final tally of the BJP candidate (petitioner) got reduced and after completion of the 6<sup>th</sup> and last round came to 12,734 in place of 12,962 (+27 & -255) as counted during original counting. Accordingly, the tally of AIUDF candidate (respondent No.8) increased to 8910 in place of original 8631 (255+24). The tally of INC candidate (respondent No.7) increased to 12,826 after recounting in place of 12808 (+18) during original counting due to acceptance of a earlier rejected votes only by 18 votes. Thus there was no anomaly in the declaration of result after recounting and allegations leveled are not based on facts and the election petition is liable to be dismissed.

7. Upon the pleadings of the parties following issues had been framed.

1. Whether bundle of votes cast in favour of AIUDF candidate was swapped in favour of the BJP candidate on table No-9
2. Whether the order for recounting of votes polled in respect of 21 Agomoni ZP Member Constituency by respondent No.4 was illegal?
3. Whether the certificate issued in respect of respondent No.7 as elected member of 21 Agomoni ZPC was unjust, improper and illegal and is liable to be set aside?
4. Whether the petitioner is entitled to get the relief as prayed for?

Issue No.1 and 2.

8. PW-1, Motior Rahman, the petitioner had supported his case as described in his petition. The PW-1 contended in his evidence that he had contested the election to the Zila Parishad for 21, Agomani ZP Member Constituency as BJP candidate. Respondents No.7 and 8 had contested the said election as INC and AIUDF candidates respectively. Returning Officer and Counting Officer along with other officers started counting votes on 14-02-2013 and 15-02-2013 and contesting candidates including respondents No.7 and 8 were present during counting. As per form XXIX-D, he had received highest number of valid votes polled, ext-2 is the copy of the form XXIX -D on 15-02-2013 when the ARO of the said 21 Agomani ZP Member Constituency was about to declare result, he was prevented by respondent No.7 and his supporters and respondent No.9 , MLA Golakganj, LAC. Ext-3 is the copy of the objection petition of respondent No.7. Respondents No.3 and 4 illegally allowed recounting of votes by an order dated 15-02-2013. Ext-4 is the said order dated 15-02-2013. On 16-02-2013 respondent No.5 vide ext-6 declared respondent No.7, Nazrul Hoque elected as a Member of 21 Agomani ZP Member Constituency after recounting in form 30-D, ext-6. According to PW-1 228 votes polled by him had been suppressed illegally with a view to get respondent No. 7 elected.

In his cross-examination PW-1 had reiterated about counting of votes having taken place on 14<sup>th</sup> and 15<sup>th</sup> February, 2013 and about O.P. No.7 filing an application for recounting of votes after completion of counting before the declaration of result. PW-1 admitted not having received declaration of result in Form -30 D. He also admitted not being able to throw light with regard to

number of suppressed votes, invalid votes, rejected votes, illegal votes and unsigned ballots. According to PW-1, recounting had taken place on 16-02-2013 at 2 p.m. PW-1 reiterated about Nazrul Hoque getting 12,826 votes and he 12,734 votes. He had not prayed for recounting of votes. He had not made any prayer against the notice issued by Deputy Commissioner, Dhubri for recounting of votes. Ext-1 is the notice of recounting issued by ARO.

9. PW-2 Bablu Kr. Roy, one of the counting agents of the petitioner had supported PW-1 with regard to the petitioner polling highest number of votes before recounting as reflected in the form XXIX-D. On 15-02-2013 when the Assistant Returning Officer was about to declare the result of 21 Agomani ZP Member Constituency he was prevented by respondent No.7 with the help of respondent No.9, MLA of Golakganj LAC, who had illegally entered into the counting hall. Thereafter objection had been filed by respondent No.7 and recounting of votes was allowed. Following recounting the respondent No.5 on 16-02-2013 declared respondent No.7, Nazrul Hoque elected to 21 Agomani ZP Member Constituency. After recounting on 16-02-2013 the form 30-D reflected Nazrul Hoque to have polled 12826, Motior Rahman, the petitioner 12734. Lots of rejected votes bearing thumb impression were accepted as valid votes in favour of respondent No.7 at the time of recounting of ballots.

In cross-examination PW-2 had said that the EVM machines were not put into service in the said election. The votes were cast by using ballot papers. He was present at various stages of counting. The counting was done in a separate room for Agomani ZPC. There were six booths and 6 (six) tables. The counting was done by the personnel appointed by Election Commission in their presence. All the counting agents of the contesting candidates were present at the time of counting. The number of votes counted during counting were announced and they had noted it down. The announcements were made after each round of counting. He was unable to throw light as to number of total votes polled. PW-2 denied that swapping of a bundle of ballot papers containing 255 ballots cast in favour of the Mokbul Hussain of AIUDF wrongly swapped in the bundle of Motior Rahman.

10. PW-4 Ahmed Ali Sarkar one of the counting agent of petitioner present during counting of votes of 21 Agomani Zila Parishad held on 14-02-2013

and 15-02-2013 at the BN College venue had also been present at the time of recounting of votes.

In his cross-examination of PW-4 admitted to election to the 21 Agomani Zila Parishad being free and fair. He was present in the counting hall till the counting was over. He had noted down number of votes polled by each candidate in the counting hall, but he had not submitted those notes with his affidavit. PW-4 was unable to throw light with regard to number of votes suppressed, invalid votes, rejected votes and erased votes. The recounting of votes had taken place in the hall itself. He was present in the recounting. The recounting was carried out by an official. After completion of the recounting, declaration was made by the Govt. Official present in the counting hall. He did not file any request for 2<sup>nd</sup> recounting neither had filed any objection. Recounting was allowed as Nazrul Hoque, NIC candidate made a complaint that bundle of votes polled in favour of Mokbul Hoque was swapped to the bundle of Motiar Rahman. Thereafter, recounting of the votes was carried out and declaration was made. As many as 12826 Nos. of votes had been polled by Nazrul during recounting and Mokbul had polled 8910 number of votes and Motior had polled 12734 number of votes.

11. OPW-1, Nazrul Hoque in his evidence had stated that after counting of votes final result was not declared and recounting was allowed as per provision of law. After recounting the result had been declared in Form 30-D. During recounting 52 votes rejected earlier in the counting and were accepted and as a result after completion of all six rounds of counting total number of rejected votes were 1208 in place of 1260. 17 votes were also allotted to the contesting candidates. Thus total 69 votes were accepted and allotted to concerned candidates. OPW-1 getting 18 additional votes, Mokbul Hussain of AIUDF getting 21 additional votes and Motior Rahman of BJP getting 27 additional votes.

In cross-examination OPW-1 admitted that at the time the election result was on the verge of being announced, Motior Rahman had polled total of 12962 of votes, he 12,808 of votes and Mokbul had polled 8631 of votes. The petitioner was there inside the hall. He had filed a petition for recounting of votes. Ext-A is the said prayer for recounting. Ext-B is the order for recounting. He had come to know at the time of making the prayer for recounting that anomaly had

been found during counting on table No.9. He had an election agent of his own at the time of counting of votes. Sri Krishna Adhikary was the election agent on Table No.9. He does not remember whether Krtishna Adhikary had reported to ARO in writing with regard to anomaly in counting on Table No.9. There were 10 counting tables. No anomaly had been found in other tables. There were six rounds of counting in all tables. The OPW-1 stated to have been the elected President of Dhubri Zila Parishad earlier. He also admitted that anomaly resulting from swapping of votes had been confined to the counting of table No.9. The recounting was done in the presence of election observer.

12. The OPW-4 Firdous Alom Siddique Jr. Assistant, Excise Branch Dhubri earlier was Jr. Assistant of office of the Deputy Commissioner, Dhubri in the Panchayat Election Branch during the Panchayat Election 2012-2013. According to OPW-4 recounting of votes for 21 Agomani Zila Parishad Member Constituency on 16-2-2013 at 12 noon at BN College, Dhubri was ordered by Deputy Commissioner, Dhubri cum Returning Officer, Panchayat Election, 2013. OPW-4 exhibited written statement ext-H and ext-H (1) and H(2) are signatures of Sri Kumud Ch. Kalita, Deputy Commissioner, Dhubri cum Returning Officer. Objection was raised by respondent No.7, INC candidate against swapping of bundle of votes before formal declaration. Ext-"Ka" is the order for recounting.

In cross-examination Sri Firdous Alom Siddique , OPW-4 admitted knowing Kumud Ch. Kalita, then Deputy Commissioner and Returning Officer, Panchayat Election, 2013 for Dhubri Sub-division having worked under said Kumud Ch. Kalita the then DC, Dhubri and Returning Officer Panchayat Election, 2013. Ext-H (3) is the signature of Sri Kumud Ch. Kalita. According to OPW-4 recounting was fairly, perfectly, genuinely carried out by the administration after observing all essential formalities as required by Panchayat Rules and guidelines. Returning Officer had ordered recounting on the basis of materials and objection filed by Nazrul Hoque, O.P. No.7. The objection was filed on the ground that bundle of votes of AIUDF candidate had been swapped inadvertently in favour of Motior Rahman of BJP. Thereafter, there was recounting, officially in presence of ARO and the election observers. Thereafter, after observing necessary formalities, the result was declared and in the said election, Nazrul Hoque was the winning candidate. He had won by a margin of 92 votes. During recounting representative of both parties were present. Counting was done several times. If

there was any anomaly discovered same was immediately set right in presence of the parties. Nazrul had polled 12826 votes, Mokbul Hussain had polled 8910 and petitioner, Motior Rahman polled 12734. Nazrul Hoque was declared wining candidate after recounting.

13. In the present case, in the light of the evidence discussed above, it is admitted that Motior Rahman, the candidate for BJP for the 21 Agomani ZPC as per Form No.XXIX-D had polled highest number of votes but the result was not announced till then since Nazrul Hoque respondent No.7 had moved the petition for recounting alleging anomaly in the counting process on table No.9. Recounting was notified by Returning Officer, then Deputy Commissioner, Sri K.C. Kalita. It is also evident from the evidence on record that no objection had been registered against the notification for recounting before the Returning Officer. Further it is also evident as per ext-H, W.S exhibited by OPW-4 that after reconsideration of rejected votes 52 rejected votes had been accepted in the recounting and a difference of 17 votes had been found as per original counting and recounting since in the original counting 35661 total votes had been found cast for the 21 Agomani ZP member Constituency and as per recounting 35 678 votes had been found cast. The respondent No.7 Nazrul Hoque getting only additional 14 votes against 27 votes allotted to Motiur Rahman during recounting and 24 votes had been allotted to Mokbul Hussain, AIUDF.

14. The evidence of OPW-4, then Junior Assistant, office of the Deputy Commissioner, Dhubri in the Panchayat Election Branch during the Panchayat Election 2012-2013 reveals that he was present during recounting, it revealed in table number 9 221 votes polled by AIUDF were swapped in Form XXIX-D wrongly by counting supervisor in favour of BJP candidate and one vote of INC. Further in table No.1 again 14 votes polled by AIUDF were shown to have been polled by BJP. Thus after recounting, number of votes polled by BJP as shown in Form No.XXIX-D were reduced by 255 votes and increasing votes polled by AIUDF candidate Mokbul Hussain from 8631 to 8910. Thus respondent No.7, a candidate for INC who was trailing BJP candidate by margin of 154 votes had been declared elected after recounting. Further evidence on record reveals that out of 68 votes which were reconsidered 27 votes had been allotted to the BJP candidate, 24 to AIUDF candidate and 14 to INC candidate and as such there was no apparent illegality proved to have been committed in ordering recounting of votes by

respondent No.5 or during recounting of votes. Admittedly by all PWs recounting had progressed in the presence of candidates from INC, BJP and election observer. Further the respondent-7 who alleged swapping of votes cast in favour of AIUDF candidate in favour of BJP candidate by counting supervisor in form XXIX-D had been proved right since during recounting as many as 255 votes cast in favour of the AIUDF candidate were swapped in favour of the BJP candidate increasing the tally of votes received by the AIUDF candidate to 8910 from 8631. Even the PW-4 counting agent of the petitioner present during recounting had admitted to recounting taking place in presence of both INC and BJP candidate and the election observer and same being peaceful. OPW-4 one of the officials present during recounting had stated the recounting to be free from anomaly. Circumstances coming up in the evidence of PWs did not indicate that order of recounting was given under inducement, threat from INC, MLA from Golakganj LAC rendering the order of recounting illegal and the recounting also.

15. Section 127 Assam Panchayat Act, 1994 relates to provision with regard to constitution of Panchayat Election Tribunal. Section 127 –P lays down grounds on which election petition lies-A person shall be guilty of all election offence, for brining a Election petition, I find that none of the grounds as enumerated in Sec.127-P have come to surface in the evidence of petitioner and other PWs. Further there is no rule barring re-consideration of rejected ballots in the recounting.

16. Thus summing up the entire discussion of the evidence of PWs, issues number 1 is decided in favour of the respondents and issues 2, 3 and 4 are decided in the negative and as such petitioner is not entitled to any relief as prayed for. The election petition is dismissed. I pass no order as to cost.

Given under my hand and seal of this Tribunal on this 12<sup>th</sup> day of August, 2016.

Dictated & Corrected by me

Tribunal Judge,  
Panchayat Election Tribunal  
Dhubri

Tribunal Judge,  
Panchayat Election Tribunal  
Dhubri

## **APPENDIX**

### A. **Witnesses.**

P.W-1 - Sri Motior Rahman  
P.W-2 - Sri Bablu Kr. Roy  
P.W-3 - Sri Abilash Das  
P.W-4 - Sri Ahmed Ali Sarkar

OPW-1 - Sri Nazrul Hoque  
OPW-2 - Sri Krishna Kanta Das  
OPW-3 - Sri Abdul Kader Prodhani  
OPW-4 - Sri Firdous Alom Siddique

### C. **Documents Exhibited by the petitioner.**

Ext-1 - Copy of Notification issued by the respondent No.3 for counting of votes in the BN. College premises.  
Ext- 2 - Copy of Form XXIX-D , Result Sheet.  
  
Ext-3 - Copy of Objection Petition.  
Ext-4 - Copy of order dated 15-02-2013  
Ext-5 - Copy of order passed by R.O, Dhubri.  
Ext-6 - Declaration in Form No. XXX –D.  
Ext-7 - Copy of petition dated 15-02-2013 to R.O, Dhubri

### D. **Documents Exhibited by the O.P.**

Ext-A - Xerox copy of prayer for re-counting.  
Ext-B - Xerox copy of order of the R.O.  
Ext-C - Xerox copy of Form XXX (D) Elected certificate and others Documents.  
Ext-D - Result Sheet form No. XXIX-D  
Ext-E - Form No.XXX (D).  
Ext-F - Appointment letter from counting agent pass & Recounting pass.  
Ext-G - Appointment letter for counting agent Pass & Re-counting pass.

Tribunal Judge,  
Panchayat Election Tribunal  
Dhubri