

GAHC010053352026



2026:GAU-AS:3968

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

Case No. : WP(C)/1548/2026

JAMIR AHMED CHOUDHURY AND ORS
S/O- MAMUN RASHID.

2: ABDUL SAHID
S/O- LATE MOIN UDDIN.

3: ESHA BIBI
W/O- LATE ABDUL BASHIR.

4: TAYBUR RAHMAN
S/O- LATE HASHIM ALI.

5: ATAUR RAHMAN
S/O- LATE HASHIM ALI.

6: ABDUL KADIR
S/O- LATE ABDUL KALAM

7: ABDUL JALIL
S/O- LATE ABDUL SATTAR

8: AMIR UDDIN
S/O- MAMUN RASHID.

9: NURUN NESSA
W/O- LATE NOOR UDDIN

10: NUR UDDIN
S/O- LATE ASADDAR ALI.

11: AAJIR UDDIN
S/O- LATE MOZID ALI.

12: TAJ UDDIN KHAN

S/O- LATE ABDUL ROUF KHAN

13: IYACHIN AHMED
S/O- LATE ABDUL MANAF.

14: KHAIRUN NESSA
W/O- LATE UZIR AHMED

15: RENU BIBI
W/O- LATE RAIS ALI.

16: FIROZ ALI
S/O- LATE MOSAB ALI.

17: TUTIBUR RAHMAN
S/O- LATE YASIN ALI

18: MOIN UDDIN
S/O- LATE ASADDAR ALI.

19: JAMAL UDDIN
S/O- LATE MOIN UDDIN.

ALL ARE R/O- VILL.- PURBO BAZARICHERRA KITTE
CHANDRAPUR UNDER PATHARKANDI LAC
ASSAM
P.O. AND P.S.- BAZARICHERRA
DIST.- SRIBHUMI
ASSAM

VERSUS

THE UNION OF INDIA AND ORS
REPRESENTED BY THE SECRETARY , MINISTRY OF LAW AND JUSTICE,
GOVERNMENT OF INDIA, NEW DELHI-110001.

2:THE ELECTION COMMISSION OF INDIA
REPRESENTED BY THE SECRETARY
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI-110001.

3:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
HOME AND POLITICAL DEPARTMENT
DISPUR
GUWAHATI-781006.

4:THE CHIEF ELECTORAL OFFICER
ASSAM
OFFICE OF THE CHIEF ELECTORAL OFFICER
ASSAM
DISPUR
GUWAHATI-781006

5:THE DEPUTY COMMISSIONER
SRIBHUMI
KARIMGANJ
ASSAM-788712.

6:THE DISTRICT ELECTION OFFICER
SRIBHUMI
DIST.- KARIMGANJ
ASSAM-788712

7:THE ELECTORAL REGISTRATION OFFICER
CONCERNED ASSEMBLY CONSTITUENCY
SRIBHUMI DIST.
ASSAM- 788712

8:THE CIRCLE OFFICER
PATHARKANDI REVENUE CIRCLE
P.O.- PATHARKANDI
ASSAM-78872

Advocate for the Petitioner : MD. A J ATIA, MS. F L MIZO,MS A H ATIA

Advocate for the Respondent : DY.S.G.I., GA, ASSAM,SC, ECI

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

JUDGMENT & ORDER

18.03.2026

Heard Mr. A.J. Atia, learned counsel for the petitioners; Mr. S.S. Roy, learned Central Government Counsel [CGC] for the respondent no. 1; Mr. A.I. Ali, learned Standing Counsel, Election Commission of India [ECI] for the respondent nos. 2, 4, 5 & 6; and Mr. S.R. Baruah, learned Junior Government Advocate, Assam for the respondent nos. 3, 5 & 8.

2. In view of the nature of the grievances raised in this writ petition and the instructions placed by Mr. Ali, learned Standing Counsel, ECI, the writ petition is taken up for disposal at the motion stage itself.

3. The petitioners, nineteen in nos., have joined together to institute the present writ petition under Article 226 of the Constitution of India stating that they have a common cause of action to espouse.

4. The petitioners have stated that they are residents of the same locality, that is, Village – Purbo Bazaricherra Kite, P.O. & P.S. – Bazaricherra, District – Sribhumi [earlier, Karimganj]. The petitioners have stated that for a long period of time, they have been casting their votes in both State Legislative Assembly Elections and/or Parliamentary Elections by virtue of enrolment of their names as voters in the electoral rolls. The petitioners have claimed they had cast their votes in the previous elections to the State Legislative Assembly and/or the Parliament as the voters from No. 125 Patharkandi Legislative Assembly Constituency [LAC], District – Sribhumi [earlier, Karimganj]. The petitioners were issued Elector Photo Identity Cards [EPICs].

5. Mr. Atia, learned counsel appearing for the petitioners has submitted that the petitioners have come to learn that in the electoral rolls published after the recent exercise of Special Revision initiated by the Election Commission of India, their names are not included in the electoral rolls. Mr. Atia has contended that in order to delete the name of a voter whose name was included in the previous electoral roll, such a person must be given a prior opportunity of being heard. But none of the petitioners was afforded any prior opportunity of being heard. He has, thus, contended that the respondent authorities have acted illegally and arbitrarily to delete the names of the petitioners from the electoral rolls.

6. Mr. Ali, learned Standing Counsel, ECI has submitted that ordinarily, prior to deletion of any names of a person from electoral roll, such a person is to be given a prior opportunity of being heard and any deletion of name can only be made after proper verification of facts. He

has submitted that the petitioners have alleged that no prior and reasonable opportunity of being heard was given to them prior to deletion of their names from the electoral rolls. Assuming such contention of the petitioner is correct, then the petitioners have a statutory remedy of filing an application under Section 23 of the Representation of the People Act, 1951 [‘the R.P. Act, 1950’, for short] and thereafter, appeals under Section 24 of the R.P. Act, 1950. Instead of availing such statutory remedy, the petitioners have directly approached this Court by way of the present writ petition. He has contended that since the matter of eligibility of the petitioners to be enrolled or continued as voters would require determination of certain factual questions, the present writ petition is not maintainable.

7. When the writ petition was moved on 16.03.2026, Mr. Ali, learned Standing Counsel, ECI was asked to obtain instructions whether the names of the petitioners are enrolled in the final Electoral Roll published for Patharkandi Legislative Assembly Constituency [LAC] after the Special Revision by today.

8. As per sub-section [3] of Section 21 of the R.P. Act, 1950, which is with a non-obstante clause, the Election Commission may at any time, for reasons to be recorded, direct a Special Revision of the electoral roll for any constituency or part of a constituency in such manner as it may think fit. By a Notification dated 17.11.2025, the Election Commission of India had directed a Special Revision in exercise of the powers under Section 21 of the R.P. Act, 1950 with reference to 01.01.2026 as the qualifying date in the State of Assam.

9. As the provisions of Section 22, Section 23 and Section 24 of the R.P. Act, 1950 are of relevance, they are reproduced herein for ready reference :-

22. Correction of entries in electoral rolls. — If the electoral registration officer for a constituency, on application made to him or on his own motion, is satisfied after such inquiry as he thinks fit, that any entry in the electoral roll of the constituency –

[a] is erroneous or defective in any particular,

[b] should be transposed to another place in the roll on the ground that the person

concerned has changed his place of ordinary residence within the constituency, or

[c] should be deleted on the ground that the person concerned is dead or has ceased to be ordinarily resident in the constituency or is otherwise not entitled to be registered in that roll,

the electoral registration officer shall, subject to such general or special directions, if any, as may be given by the Election Commission in this behalf, amend, transpose or **delete the entry after proper verification of facts in such manner as may be prescribed :**

Provided that before taking any action on any ground under clause [a] or clause [b] or any action under clause [c] on the ground that the person concerned has ceased to be ordinarily resident in the constituency or that he is otherwise not entitled to be registered in the electoral roll of that constituency, the electoral registration officer shall give the person concerned a reasonable opportunity of being heard in respect of the action proposed to be taken in relation to him after proper verification of facts in such manner as may be prescribed.

23. Inclusion of names in electoral rolls. —

[1] Any person whose name is not included in the electoral roll of a constituency may apply to the electoral registration officer for the inclusion of his name in that roll.

[2] The electoral registration officer shall, if satisfied that the applicant is entitled to be registered in the electoral roll, direct his name to be included therein after proper verification of facts in such manner as may be prescribed :

Provided that if the applicant is registered in the electoral roll of any other constituency, the electoral registration officer shall inform the electoral registration officer of that other constituency and that officer shall, on receipt of the information, strike off the applicant's name from that roll.

[3] No amendment, transposition or deletion of any entry shall be made under Section 22

and no direction for the inclusion of a name in the electoral roll of a constituency shall be given under this section, after the last date for making nominations for an election in that constituency or in the parliamentary constituency within which that constituency is comprised and before the completion of that election.

[4] The electoral registration office may for the purpose of establishing the identify of any person require that such person may furnish the Aadhaar number given by the Unique Identification Authority of India as per the provisions of the Aadhaar [Targeted Delivery of Financial and Other Subsidies, Benefits and Services] Act, 2016 [18 of 2016] :

Provided that the electoral registration officer may also require the Aadhaar number from persons already included in the electoral roll for the purpose of authentication of entries in electoral roll and to identify registration of name of the same person in the electoral roll of more than one constituency or more than once in the same constituency.

[5] Every person whose name is included in the electoral roll may intimate his Aadhaar number to such authority in such form and manner as may be prescribed, on or before a date to be notified by the Central government in the Official Gazette.

[6] No application for inclusion of name in the electoral roll shall be denied and no entries in the electoral roll shall be deleted for inability of an individual to furnish or intimate Aadhaar number due to such sufficient cause as may be prescribed :

Provided that such individual may be allowed to furnish such other alternate documents as may be prescribed.

24. Appeals.—

An appeal shall lie within such time and in such manner as may be prescribed —

[a] to the district magistrate or additional district magistrate or executive magistrate or district collector or an office of equivalent rank, from any order of the electoral Registration Officer under Section 22 or Section 23.

[b] to the chief electoral officer, from any order of the district magistrate or the additional

district magistrate under clause [a].

10. As per the provisions contained in Section 22, if any deletion of a person's name from the electoral roll is to be made on the grounds mentioned in clause [a] or clause [b] or clause [c] by the jurisdictional Electoral Registration Officer, then such deletion can only be made only after giving the person concerned a reasonable opportunity of being heard in respect of the action proposed [that is, deletion] to be taken in relation to him, that too, after proper verification of facts in such manner as may be prescribed. As per Section 2[h] of the R.P. Act, 1950, 'prescribed' means prescribed by rules made under the R.P. Act, 1950.

11. As per the provisions of Section 23, any person whose name is not included in the electoral roll of a constituency may apply to the Electoral Registration Officer for the inclusion of his name in that roll. The Electoral Registration Officer shall, if satisfied that the applicant is entitled to be registered in the electoral roll, direct his name to be included therein after proper verification of facts in such manner as may be. No direction for the inclusion of a name in the electoral roll of a constituency shall be given under Section 23, after the last date for making nominations for an election in that constituency or in the parliamentary constituency within which that constituency is comprised and before the completion of that election.

12. From the above provisions, it is clear that it is within the rights of the petitioners to make an application under Section 23 for inclusion of their names in the electoral roll before the jurisdictional Electoral Registration Officer as, according to the petitioners, their names were unjustifiably deleted from the electoral roll without following the procedure prescribed in Section 22.

13. The Registration of Electors Rules, 1960 ['the Registration Rules', for short] are framed under the R.P. Act, 1950. Rule 26 of the Registration Rules has provided for correction of entries and inclusion of names in electoral rolls. Sub-rule [1] of Rule 26 has prescribed for the forms for an application under sub-section [1] of Section 23. As per sub-rule [3] of Rule 26,

the Registration Officer shall, immediately on receipt of such application, direct that one copy thereof be pasted in some conspicuous place in his office together with a notice inviting objections within a period of seven days from the date of such posting. A mandate is contained in sub-rule [4] of Rule 26 to the effect that the Registration Officer shall, as soon as may be after the expiry of the period specified in sub-rule [3], consider the application and objections thereto, if any, received by him and shall, if satisfied, direct the inclusion, deletion, correction or transposition of entries in the roll, as may be necessary. A mandate is also provided to the effect that when an application is rejected by the Registration Officer, he shall record in writing a brief statement of his reasons for such rejection.

14. Section 24 of the R.P. Act, 1950 has provided for appeals against any order passed by the jurisdictional Electoral Registration Officer under Section 23 of the R.P. Act, 1950. A first appeal would lie to the District Magistrate or Additional District Magistrate or Executive Magistrate and the District Collector or an office of equivalent rank from and order of the Electoral Registration Officer under Section 23. A second appeal would lie to the Chief Electoral Officer from any order of the District Magistrate or the Additional District Magistrate.

15. Today, Mr. Ali, learned Standing Counsel, ECI has submitted that he has received instructions in response to the queries made by the Court vide an Office Letter bearing no. SEL.27/2026/143 dated 17.03.2026 from the District Commissioner & District Election Officer, Sribhumi. Stating that he has permission to place the instruction before the Court, he has placed the same.

16. In the instructions in the form of an Office Letter bearing no. SEL.27/2026/143 dated 17.03.2026, it is mentioned that upon verification of the electoral records of the concerned polling station under the jurisdictional Electoral Registration Officer, Patharkandi, it is found that the names of the petitioners are not present in the current electoral roll. However, a Representation dated 02.03.2026 was submitted by the petitioners before the respondent no. 6. Upon receipt of the Representation dated 02.03.2026, the respondent no. 6 had immediately forwarded the Representation to the respondent no. 7 seeking a Report in the matter. The respondent no. 7 has instructed to verify the claims of the petitioners and to take

necessary action for inclusion of their names in the electoral roll in accordance with the applicable rules, if it is found that their names had been wrongly deleted. In the instruction, it has been reported by the respondent no. 6 that the necessary process has been initiated for inclusion of the names of the petitioners in the electoral roll.

17. In view of the instructions placed in the afore-stated manner, the writ petition is disposed of with a direction to the respondent no. 6 and the respondent no. 7 to bring the process initiated pursuant to receipt of the Representation dated 02.03.2026 to its logical conclusion as expeditiously as possible, taking into consideration the time-limit prescribed in the provisions of the R.P. Act, 1950 and the Representation of Electors Rules, 1960 since, in the meantime, the Notification declaring the date of election to the Assam Legislative Assembly has been published. The decision to be taken on the Representation shall be communicated to the petitioners forthwith thereafter. It is observed that in the event the petitioners find themselves aggrieved in any manner by the decision so taken, the petitioners would be at liberty to avail the statutory remedy available to them under Section 24 of the R.P. Act, 1950.

18. The Office Letter bearing no. SEL.27/2026/143 dated 17.03.2026 placed by Mr. Ali, learned Standing Counsel, ECI is kept with the case record by marking the same as Document 'A'.

JUDGE

Comparing Assistant