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**(1995) 01 GAU CK 0009**  
**In the Gauhati High Court**  
**Case No : Civil Revision No. 530/94**

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|-----------------------------------|----|------------|
| Shri Arjun Chandra Das and Others | Vs | APPELLANT  |
| Ranjit Oja                        |    | RESPONDENT |

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**Date of Decision :** 09-01-1995

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2  
Constitution of India, 1950 — Article 226

**Citation :** AIR 1995 Guw 108

**Hon'ble Judges :** M. Sharma, J

**Bench :** Single Bench

**Advocate :** S.M. Medhi, M. Das and A. Choudhury, for the Appellant; N.M. Lahiri and N. Choudhury, for the Respondent

**Final Decision :** Allowed

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## Judgement

M. Sharma, J.—This revision petition has been filed against the impugned judgment dated 7-12-1994 passed by the District Judge, Barpeta in Misc. Appeal No. 16/94 dismissing the appeal and upholding the ad interim injunction granted by the Assistant District Judge, Barpeta in Misc. (J) No. 69/94 dated 19-11-1994 arising out of Title Suit No. 58/94.

2. The opposite party as plaintiff filed the abovementioned title suit for a decree that the cancellation of nomination paper filed by the petitioner for election of General Secretary of M.C. College Students Union, Barpeta was illegal and for declaration that his nomination paper is valid, along with an application for permanent injunction restraining the college authority/the opposite party defendants from holding election for the post of General Secretary of the Students Union on the basis of acceptance of other nomination papers and cancellation of nomination paper on 16-11-1994.

3. The case in brief is that under the provisions of the Constitution, namely, Madhav Choudhury College Student Union Constitution (for short the Constitution) the Executive Body of the Student Union is constituted every year.

Clause 9 of the said Constitution provides for election of office bearers of the Student Union and accordingly like other previous year the Principal of the college, petitioner No. 1, issued notice dated 9-11-1994 notifying the date of election of the Union as on 21-11-1994 and constituted the Election Board and appellate body for smooth conduct of the election. The petitioner No. 2, who have been made the Election Officer, issued notice dated 15-11-1994 stating the Rules and Procedure for holding election for the Student Union. The petitioners Nos. 3 to 7 have been made the Election Officers and petitioners Nos. 8,9 and 10 have been made members of the appellate body. As per the said notice, the last date for submitting nomination papers was 16-11-1994 at 12 noon and time for scrutiny was fixed at 1.30 PM on the same day and 12 noon of 17-11-1994 was fixed for scrutiny of nomination papers etc, (Annexure IV to the petition).

4. The plaintiff opposite party filed nomination paper to contest the election, for General Secretary of the Student Union who is the student of 1st TDC (Arts) of the said college under Roll No. 486, In the nomination paper the opposite party mentioned his Roll No. 468 instead of 486 and in his declaration paper also which had been filed along with the nomination paper the opposite party described his Roll No. as 468 instead of 486, Further the digit No. "4" and "8" were written in Assamese, while the digit "6" in the middle was written in English which stood like 86. As per the notice dated 15-11-1994 scrutiny of the nomination paper was fixed on 16-11-1994 and on scrutiny the Election Board found that the Roll No. 468 as shown by the plaintiff opposite party in his nomination paper and in the declaration form, did not tally with the Roll number recorded in" the college records at the time of his admission and the college record showed that the holder of Roll number 468 is Sri Hemen Deuri, another student of 1st year TDS course who is a regular student of the college like the opposite party/plaintiff. As the nomination paper was found materially defective to his identity his nomination paper was cancelled. At the time of submission of the nomination papers, a register was maintained and the candidates put their names, classes, sections, Roll numbers, date of submission of nomination papers, signature of the candidates. Having come to know about the cancellation of his nomination paper the opposite party field an application before the Principal of the college, wherein he requested to inform him the cause of cancellation of his nomination paper. The Principal forwarded the letter to the Election Officer, petitioner No. 2 who on the same day sent the same to the appellate body with request to give a decision in the matter. In the said application also the opposite party mentioned his Roll No. as "468" (Annexure VIII to the petition) and accordingly the Principal issued a notice to hold a meeting on 17-11-1994 for hearing of the appeal. The appellate body came to the decision that the application was not an appeal and therefore did not fall within the purview of the appellate body as the opposite party/plaintiff did not challenge the decision of the Chief Election Officer nor mentioned any cause of grievance and seek any relief and only wanted to know the cause of rejection of his nomination paper (Annexure-X). Against this decision the suit "was filed along with a prayer for permanent injunction as

stated above.

5. The application for temporary injunction was heard by the trial court, being Misc. (J) Case No. 69/94 and by the impugned order granted interim injunction on the ground that the suit would be defeated if temporary injunction is not granted and accordingly restrained the petitioners/defendants from holding the election of office of General Secretary to be held on 21-11-1994 which had been affirmed by the impugned order of the lower appellate Court. Consequently the election for the General Secretary of the Student Union could not be held though the election of all other office bearers of the Student Union had been held and results announced. There were six other candidates for the office of General Secretary whose nominations have been scrutinised and found valid and were preparing for fighting the election, but, admittedly, those six candidates were not made parties in the said suit and for the impugned injunction order they were prevented from contesting the election without giving opportunities to represent their case.

6. To examine the jurisdiction of the trial court in passing the impugned order, the consideration has to be made as to the nature of the suit. Apparently, the suit was for declaration that the nomination paper be declared as valid after declaring the cancellation of the nomination paper as illegal and against the principle of natural justice, equity and good conscience. As stated above, for the purpose of maintaining discipline and convenience a Constitution has been made wherein clause 9 of the said Constitution provides for the conduct of the election of the office bearers of the Student Union and Sub-clause (ga) of clause 9, provides that the Principal of the college shall constitute an appellate body with three competent members selected from the teaching staff (lecturers) of the college to dispose of any complaint which may arise against the decision of the Election Officer. It is also provided in the said clause that if election cannot be held due to unavoidable circumstances, the Principal shall nominate members and constitute the Executive Committee of the Student Union.

7. Mr. Lahiri, learned Sr. counsel for the opposite party caveator submitted that the appellate body has illegally rejected the application on the technical ground only, that the mistake in giving the correct Roll number was made inadvertently and the same could have been rectified, giving a chance to the plaintiff/opposite party.

8. On perusal of the impugned judgment and examining the records, it emerges that the nomination paper was found defective as the roll number of the candidate as mentioned in the nomination paper and in the declaration paper was not his roll number and this number was allotted, according to register of the college, to one Mr. Hemen Deuri, who is also a student of 1st year TDC course of the college. The petitioner, who seems to be very conscious about his right wrote his roll number in his nomination paper mixing both English and Assamese digits, as stated above, which shows his carelessness and indicates his lack of seriousness which is unbecoming for a candidate who aspires for a

responsible office of the General Secretary of his College Student Union. Though the election of a College Student Union need not be equated with general election for legislature/parliament, the spirit of the procedure of electioneering has to be followed where election by democratic norms is contemplated. The process and procedure and the norms followed in any type of elections should not be taken lightly and should be set aside on the ground, generally followed in election procedure.

9. The Courts below granted temporary injunction on the ground only that the suit would be defeated if the temporary injunction was not granted. Considering the nature of the case, the courts below ought to have considered and find out a prima facie case for trial. In that case the judicial responsibility of the court was to follow the spirit of the procedure and norms of an election matter. Clause 9 of the Constitution clearly provides that there shall be an Election Board consisting of five members selected by the Principal from amongst the teachers of the college who shall assist the Election Officer appointed by the Principal of the college and this Election Officer in co-operation of those members of the Board conduct the matters relating to election of the office bearers of the Student Union and this Board can form bye laws for conduct of the election; that this Board by notification, declare all matters relating to the election, call for nomination papers and scrutinise the same and after scrutiny declared the names of the candidates whose nomination papers were found valid. Apparently, there were six other candidates for the office of the General Secretary of the Student Union whose nomination papers were declared valid and in that view of the matter right to contest the election accrued to them and any situation preventing them for contesting the election, shall amount to deprivation of their legal right to contest the election. The admitted position is that those six candidates whose nomination papers were declared valid and who were preparing for contesting the election, were not made parties which is the most important legal lacuna both in spirit and law of the election matter. Clause 9 of the Constitution provides for appeal. Attempt has been made to show that the application (Annexure-IX) has been filed before the Principal which was an appeal and this was refused by the petitioners/defendants on mere technical ground. That in the appeal petitioner claimed to know the reason of cancellation of his nomination paper. On examination of the Annexure IX it appears that the application was addressed to the Principal of the college for information as to why his nomination was cancelled, as his name was not found in the list of the candidates, published after scrutiny of the nomination papers. Plaintiff/opposite party has alleged manipulation, mala fide as the scrutiny was made behind his back. On the face of the record, I found that there is no prima facie case as the records clearly show that there is a vital defect in the nomination papers which amounts to misidentification of the candidate and which, in my view, reflects the carelessness, casual attitude of the opposite party who was the aspirant for the most responsible office of the Student Union. Further the suit being related to election of the office of the General Secretary, the balance of convenience is

against grant of temporary injunction, as the opposite party/plaintiff will not suffer any irreparable loss or hardship, inasmuch as, in the event of his success in the suit election of elected candidates shall automatically be held invalid, consequent upon the result in the suit.

10. In view of my above discussions I hold that the courts below acted illegality with material irregularity in granting the impugned temporary injunction in favour of the opposite party/plaintiff and the same is accordingly set aside. The trial court is directed to dispose of the suit within two months from receipt of this judgment. The concerned college authority, the petitioners, has no bar to proceed with the election to the office of the General Secretary of the college on the basis of the declaration dated 16-11-1994 by which six other candidates' nomination papers have been found valid.

11. In the result the revision petition is allowed. No costs.