

GAHC010085182023



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

Case No. : WP(C)/2142/2023

USMAN HUSSAIN LASKAR
SON OF BABUL HUSSAIN LASKAR,
A RESIDENT OF SATKARAKANDI PART-II,
SONAI, P.O.- SONAI, DISTRICT- CACHAR,
ASSAM, PIN- 788013.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM,
HIGHER EDUCATION DEPARTMENT,
ASSAM, DISPUR, PIN- 781006.

2:THE ASSAM UNIVERSITY
SILCHAR
REPRESENTED BY ITS REGISTRAR
DURGAKONA
SILCHAR
P.O.- ASSAM UNIVERSITY
DISTRICT- CACHAR
ASSAM
PIN- 788011.

3:THE PRINCIPAL
GURUCHARAN COLLEGE
SILCHAR
DISTRICT- CACHAR

ASSAM
PIN- 788004.

4:THE RETURNING OFFICER
ELECTION TO STUDENTS UNION 2022-23
GURUCHARAN COLLEGE

SILCHAR
DISTRICT- CACHAR

ASSAM
PIN- 788004.

5:THE RETURNING OFFICER
ELECTION TO STUDENTS UNION 2022-23
GURUCHARAN COLLEGE

SILCHAR
DISTRICT- CACHAR

ASSAM
PIN- 788004

Advocate for the Petitioner : MR. S D PURKAYASTHA

Advocate for the Respondent : SC, HIGHER EDU

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

20/04/2023

Heard Mr. S D Purkayastha, learned counsel for the petitioner and Mr. S Das, learned Standing counsel, Department of Higher Education for the respondent No. 1.

2. Petitioner is a student of TDC Semester III, Arts, for the academic Session 2022-2023, in Gurucharan College, Silchar, having Roll No. 06290. The academic Session 2022-2023 in the said college commenced from July, 2022 up to June, 2023.

3. The authorities of Gurucharan College, Silchar, District-Cachar (herein after referred to as the said college) under reference No. GCC/Elec (Notif) 2022-23/1 dated 10.04.2023 notified election to its Students' Union 2022-2023 for the posts of (i) President, reserved for the students of TDC 3rd Year (6th Semester) classes only, (ii) Vice-President, reserved for students of TDC 2nd and 3rd year (4th and

6th Semester) classes only, (iii) General Secretary, reserved for the students of TDC 2nd Year (4th Semester) classes only, (iv) Assistant General Secretary, open for students of all classes, (v) Assistant General Secretary (Female), reserved for girl students of all classes, (vi) Sports Secretary, open for students of all classes, (vii) Cultural Secretary, open for students of all classes, (viii) Magazine Secretary, open for students of all classes, (ix) Boys Common Room Secretary, reserved for boy students of all classes and (x) Girls Common Room Secretary, reserved for girl students of all classes, notifying further the date and time of Notification as 10.04.2023 at 01:30 PM, issue of Nomination Paper in online mode as 11.04.2023 from 10:00 AM to 03:00 PM, submission of duly filled-in-Nomination Papers as 12.04.2023 from 10:00 AM to 03:00 PM, scrutiny of Nomination Papers as 13.04.2023 from 9:00 AM to 12:00 Noon, withdrawal of Nomination Paper as 13.04.2023 from 12:30 PM to 02:30 PM, announcement of list of Contesting Candidates as 13.04.2023 at 3:30 PM, Platform Lectures on 17.04.2023 and 18.04.2023 from 9:00 AM to 02:00 PM and from 09:00 AM to 03:00 PM on 19.04.2023, Demonstration of election process for voters from 03:00 PM to 05:00 PM on 19.04.2023, Election Campaign ends at 05:00 PM on 19.04.2023, Polling time from 09:00 AM to 02:00 PM on 21.04.2023, counting of votes from 03:00 PM onwards on 21.04.2023 and declaration of results on 21.04.2023.

4. From the issuance of the said notification dated 10.04.2023 by the authorities of said College for holding election of its Students' Union, the Model Code of Conduct of election in that college came into effect from 11:00 AM of 10.04.2023, which shall remain in force till the declaration of the results.

5. Placing the provisions relating to frequency and duration of the Election Process provided under clause 6.4 of the Lyngdoh Commission's recommendation, that was accepted by the Hon'ble Supreme Court, the petitioner submitted that the authorities of said College, towards the end of the academic session 2022-2023 have scheduled the election fixing tomorrow, i.e., 21.04.2023 for which the authorities of the said College issued Election Notification only on 10.04.2023, where the said election is not by a process of ballot paper but with the help of ballot computer in a computerize process in each of the booth for casting votes in that College.

6. Petitioner stated that the post of President of the Students' Union of said College, as notified on 10.04.2023 is reserved for the students of TDC 3rd Year (6th Semester) classes only, where the elected President from the 3rd year TDC students of said College shall have a period of just more than 2 (two) months only, as the academic session 2022-2023 will come to an end in June, 2023.

7. By placing all these, the petitioner submitted that the respondent College have not complied with the provisions of the recommendations made by the Lyngdoh Commission that was accepted by the Hon'ble Supreme Court. The petitioner has preferred this writ petition praying before this Court to set aside and cancel the impugned Notification dated 10.04.2023 issued by the authorities of said College in holding election of the Students' Union of that college.

8. Clause 6.4 of the Lyngdoh Commission's recommendation provides for "Frequency and Duration of the Election Process".

9. Clause 6.4.1 of said Lyngdoh Commission stipulates as follows:-

"It is recommended that the entire process of elections, commencing from the date of filing of nomination papers to the date of declaration of results, including the campaign period, should not exceed 10 days."

10. Clause 6.4.2 of the Lyngdoh Commission provides that:-

"It is further recommended that elections be held on a yearly basis and that the same should be held between 6 to 8 weeks from the date of commencement of the academic session."

11. On being enquired as to how fundamental rights of the petitioner guaranteed under the Constitution has been violated by the process of holding of election of the Students' Union of said College in April, 2023, the petitioner submitted that though there is no such violation of his fundamental rights by holding the said election for the Students' Union of the College, the college authority did not follow the recommendation of the Lyngdoh Commission in holding the election for its Students' Union with regard to the selection of time as prescribed at Clause 6.4.2, since said election has now been scheduled in the later part of the academic session 2022-2023, in violation of the norms.

12. It is seen that the petitioner has filed this writ petition on 19.04.2023, that too, only after issuance of the impugned Election Notification dated 10.04.2023 by the authorities of said College regarding holding of election of the Students' Union of the college, fixing 21.04.2023 as the date of the election, whereas the election notification for the Students' Union of said College was issued on 10.04.2023.

13. It is seen that the petitioner has filed this writ petition on 19.04.2023 challenging the impugned Election Notification dated 10.04.2023, where the election for the Students' Union of said College is fixed tomorrow, i.e., on 21.04.2023. However, the petitioner did not approach the appropriate forum for holding election for the Students' Union of the said College either immediately after 6 to 8 weeks from the date of commencement of the academic session of the said College in July, 2022 or before the said period as per the recommendation of the Lyngdoh Commission as stipulated at clause 6.4.2.

14. The implementation of the recommendation of the Lyngdoh Commission approved by the Hon'ble Supreme Court regarding the Students' Union in an academic Institution is only a guideline but it is not a statutory document.

15. Mr. Das, learned Standing counsel, Higher Education Department has placed a judgment of the Hon'ble Calcutta High Court in the case of *Aditya Ghosh and Ors. Vs. University of Calcutta and Ors.* as well as *Sitam Singha and Ors. Vs. The State of West Bengal and Ors.* decided on 07.03.2012, wherein the Hon'ble Calcutta High Court have held as follows:-

“26. Moreover, this Court cannot held but express its opinion that the overall texture of the cases at hand are intra students' rivalry based on political considerations. This would be evident from the various statements made in the writ petitions and which have been recorded above. Such intra students' rivalry cannot be a subject matter of writ petitions under Article 226 of the Constitution of India. Moreover, if the grievance of the petitioners is that no action has been taken by the Police even after filing of complaints, then their remedy lies by way of moving the appropriate Criminal Court having jurisdiction but for such grievances, a writ petition would not lie.

27. Moreover, this Court on 11.01.2012, has already held in the case of Mr. Dibyendu Modak and Anr. Vs. State of West Bengal & Ors. WP No. 365 (w) of 2012, that the claim of the petitioners flows from a non-statutory document being the Constitution of the Students' Federation. Another Hon'ble Single Judge in the case of Himadri Sekhar Biswas and Others Vs. Behala College and Others had held that actions taken to fulfill an obligation cast on the basis of a non-statutory document cannot be held to be an action which may be described as a public function or in the discharge of any public duty and therefore, a writ petition was not accepted to be maintainable.

28. This Court would go a step further. While following the aforesaid judgment passed in the case of Himadri Sekhar Biswas, this Court would further like to state that there may be some Colleges where elections are held on the basis of University Regulations and therefore, these elections can be said to be held under a statutory document but even then, a writ petition emanating out of such students' election will not be maintainable under Article 226 of the

Constitution of India because whatever the results of the election are or whatever procedure may be followed in these elections, whether they be statutory or non-statutory, the ultimate outcome of the same concerns only the students of that particular institution/college and such an outcome cannot be said to have any nexus or any connection in either the domain of public law or in the domain where the public at large can be said to be affected. These elections, at best, serve the own interest of the college and/or the students and/or the University but they do not affect public life. Consequently, a writ petition in such educational institution election matters would not be maintainable even if an election is held under any rule or regulation of any University."

16. Approving the decision of the Hon'ble Calcutta High Court dated 11.01.2012 in the case of *Mr. Dibyendu Modak and Anr. Vs. State of West Bengal & Ors.* WP No. 365 (w) of 2012, the said Court have held that *the claim of the petitioners flows from a non-statutory document being the Constitution of the Students' Federation.*

17. Referring to its earlier decision in the case of *Himadri Sekhar Biswas and Others Vs. Behala College and Others*, the Hon'ble Calcutta High Court have held that *actions taken to fulfill an obligation cast on the basis of a non-statutory document cannot be held to be an action which may be described as a public function or in the discharge of any public duty and therefore, a writ petition is not accepted to be maintainable.*

18. In the case of *Aditya Ghosh and Ors. (supra)*, the Hon'ble Calcutta High Court went ahead a step further, observing that – *there may be some Colleges where elections are held on the basis of University Regulations and therefore, these elections can be said to be held under a statutory document but even then, a writ petition emanating out of such students' election will not be maintainable under Article 226 of the Constitution of India because whatever the results of the election are or whatever procedure may be followed in these elections, whether they be statutory or non-statutory, the ultimate outcome of the same concerns only the students of that particular institution/college and such an outcome cannot be said to have any nexus or any connection in either the domain of public law or in the domain where the public at large can be said to be affected. These elections, at best, serve the own interest of the college and/or the students and/or the University but they do not affect public life. Consequently, a writ petition in such educational institution election matters would not be maintainable even if an election is held under any rule or regulation of any University.*

19. Submission of Mr. Das, learned Standing counsel, Higher Education Department has force.

20. It is only the petitioner, who has approached this Court against the said Election Notification dated 10.04.2023 issued by the authorities of Gurucharan College, Silchar for holding election of its Students' Union.

21. Further, the Court did not find any such violation of the provisions of Article 14 of the Constitution of India in holding such election of the Students' Union in said College notified on 10.04.2023.

22. The petitioner has also failed to establish any such violation of his fundamental rights guaranteed to him under the Constitution of India violated by the impugned Election Notification dated 10.04.2023 issued by the authorities of Gurucharan College, Silchar, District-Cachar for holding election of its Students' Union.

23. Moreover, the report of the Lyngdoh Commission regarding holding of elections to the Students' Union of Educational Institution is only a recommendation and the said recommendation does not have any statutory force.

24. For the reasons above, considering the entire aspects of the matter and on hearing the parties, the Court is of the view that this writ petition challenging the Election Notification dated 10.04.2023 issued by the authorities of Gurucharan College, Silchar, District-Cachar for holding of election of the Students' Union of said College for which the election is scheduled tomorrow, i.e., 21.04.2023, does not call for any interference in exercise of its power under Article 226 of the Constitution of India. Moreover, this petition preferred by the petitioner is also not maintainable.

25. Accordingly, this writ petition stands dismissed.

JUDGE

Comparing Assistant