

Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 401 of 2021

Date of Decision: 14.03.2024

The Garikhana Masjid Committee
Represented by its Secretary
Garikhana, Lumdiengjri, Shillong,
East Khasi Hills District, Meghalaya

... Petitioner

–Versus–

1. The State of Meghalaya represented by the Commissioner and Secretary Education, Shillong.
2. The Directorate of School Education and Literacy, Meghalaya, Shillong.
3. The Sub- Divisional School Education Officer, Shillong.
4. The School Managing Committee Madrassa Hemayatul Islam, L.P. School, Shillong
Represented by its President/Secretary

... Respondents

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s)	: Mr. T.T. Diengdoh, Sr. Adv. with Mr. C.C.T. Sangma, Adv.
For the Respondent(s)	: Mr. K.P. Bhattacharjee, GA (For R 1-3) Mr. H.L. Shangreiso, Sr. Adv. with Mr. T. Dkhar, Adv. (For R 4)

i)	Whether approved for reporting in Law journals etc.:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

J U D G M E N T

1. An order dated 20.08.2021 issued by the I/C Sub-Divisional School Education Officer, Shillong whereby the Managing Committee of the Madrasa Hemayatul Islam L.P School, Shillong was approved for a period of three years w.e.f. 20.08.2021 to 19.08.2024 is under challenged in this writ petition filed by the petitioner/Committee along with prayer for approval of an alternate list of Managing Committee members of the said L.P. School, which list has been forwarded by the petitioner/Committee to the said Sub-Divisional School Education Officer, Shillong.

2. Heard Mr. C.C.T. Sangma, learned counsel for the petitioner who has submitted that the petitioner/Committee was set up under the Societies Act, 1860 and duly registered on 26.10.2015 with registration number being No. E.16/5/2015/166 has decided to set up an educational institution at Garikhana, Shillong on its land and accordingly, the Madrasa Hemayatul Islam Lower Primary School was established. The same was later upgraded to upper primary school.

3. On the said school being recognized by the Government and coming under the Deficit Grant-In-Aid Scheme, the Managing Committee of the school was constituted by the general body of the petitioner/Committee with the same being approved by the Government

as per the relevant rules and regulations.

4. The learned counsel went on to further submit that sometime in the year 2017, a group of vested interest surreptitiously formed a Managing Committee of the school without the knowledge and consent of the petitioner/Committee. The said constitution of the said Managing Committee was, however, not given effect to by the respondent No. 3 herein which prompted the Secretary of such Managing Committee to approach this Court with a petition being WP(C) No. 115 of 2018. This Court then vide order dated 16.05.2018 had directed the respondent No. 3 to look into the matter and to take necessary action.

5. On so being directed, the respondent No. 3 enquired into the matter and came to a finding that the petitioner/Committee is the sponsoring body of the school. This finding was informed to the Ex-Secretary, Madrasa Hemayatul Islam Upper Primary School vide communication dated 30.05.2018. The Managing Committee proposed by the petitioner/Committee was duly approved for a period of three years w.e.f. 10.11.2018 to 10.11.2021.

6. It is also the submission of the learned counsel that in course of its functioning, the Managing Committee, the tenure of which will expire only on 10.11.2021 was suddenly cut short by three months, with the respondent No. 3 constituting a new Managing Committee on 20.08.2021 without the knowledge and consultation of the petitioner/Committee.

7. The petitioner/Committee on coming to know of the constitution of the said illegal Managing Committee had, on receipt of information

through the Right to Information (RTI) query, petitioned the respondent No. 3 to put on hold the said newly constituted managing committee and instead to re-constitute the same with the one proposed by the petitioner/Committee, however, this request went unheeded, even when the same request was made to the Commissioner and Secretary, Education Department and also to the Education Minister of the State Government. Hence this petition.

8. The learned counsel has maintained that the petitioner/Committee is the sponsoring Committee and as such is entitled to propose the list of Managing Committee members to the relevant authorities for approval. In this regard, reference is made to the communication No. SDSEO/GR-2/MC/2018 dated 30.05.2018 issued by the Sub-Divisional School Education, Shillong to the District School Education Officer, East Khasi Hills District wherein the subject matter is with regard to the claim and counter claim by the parties in respect of the management of the Madrasa Hemayatul Islam U.P. School, Shillong and the matter having been inquired into, the Enquiry Officer that is, the Sub-Divisional School Education, Shillong came to the conclusion that the Garikhana Masjid Committee is the sponsoring body of the said Madrasa Hemayatul Islam U.P. School, Shillong.

9. In support of his case the learned counsel for the petitioner has cited the case of:

- i. Rai Bahadur Anup Chand Hindi High School, Shillong & anr. v. State of Meghalaya & Ors., 2005 SCC Online Gau 101, para 4, 5, 6, 12, 13 and 14;

- ii. *Arya Samaj & Anr. v. State of Meghalaya & Ors.*, 2021 SCC Online Megh 34, para 4, 5, 7 and 8.

10. Finally, the learned counsel has submitted that on the basis of the above submission and contention, this Court may be pleased to set aside and quash the impugned order dated 20.08.2021 (Annexure-10 to this petition) and also to direct the concerned authority to accord approval to the list of members of the Managing Committee of the Madrasa Hemayatul Islam L.P. School, Shillong forwarded to the respondent No. 3 vide letter dated 01.11.2021 (Annexure-9).

11. Per contra, Mr. K.P. Bhattacharjee, learned GA appearing for the respondents No. 1, 2 and 3 respectively, while opposing the submission made by the learned counsel for the petitioner has submitted that the claim of the petitioner/Committee that the School Managing Committee formed by the respondent No. 4 without consulting it should not be allowed, the same is made without any basis or evidence on record.

12. It is also submitted that the petitioner/Committee has no locus standi to file this instant writ petition since any constitution or reconstitution of the Managing Committee of the said Madrasa Hemayatul Islam L.P. School does not require any approval from the petitioner's Committee. The claim of the petitioner/Committee that it is the sponsoring body of the said school is also only a mere averment and a disputed question of fact.

13. Again, the learned GA has submitted that the reliance of the petitioner/Committee on the communication dated 30.05.2018

(Annexure-3) to say that the relevant authority has come to the conclusion that the petitioner/Committee is the sponsoring body of the Madrasa Hemayatul Islam L.P. School in incorrect inasmuch as the said report refers to the management of the Madrasa Hemayatul Islam U.P. School and not the L.P. School since the management of the U.P. School and the L.P. School are separate and distinct from each other.

14. As to the approval of the new Managing Committee vide order dated 20.08.2021 (Annexure-10), it is the submission of the learned GA that there is no illegality in the constitution of the Managing Committee of the Madrasa Hemayatul Islam L.P. School even if the same was constituted prior to the expiry of the previous Committee since it is the Secretary of the previous Committee who had requested for constitution of the new Committee for the various reasons stated in the letter dated 09.08.2021 (Annexue-1 to the counter affidavit of respondent No. 2). In this context, the proposal of the petitioner/Committee dated 01.11.2021 for formation of a new Managing Committee of the said L.P. School cannot be accepted in any case since the same has not been done so in accordance with the Right to Education Act, 2009 and the related rules thereto.

15. It is, therefore, prayed that this petition is devoid of merit and the same be accordingly dismissed.

16. Mr. H.L. Shangreiso, learned Sr. counsel for the respondent No. 4/Managing Committee has at the outset submitted that the present Managing Committee came about basically for the reason that there was non-cooperation and disinclination of most of the members of the previous

Managing Committee, who in spite of being duly notified of the meetings held on several dates, failed to attend the same. Therefore, the stakeholders, including the parents/guardians and teachers, on being duly notified vide notice dated 15.07.2021, has accordingly constituted the new Managing Committee on 03.08.2021. Due procedure and adherence to relevant rules was followed which prompted the respondent No. 3 to accord approval of the new Managing Committee vide order dated 20.08.2021.

17. Coming to the competency of the petitioner/Committee to prefer this instant writ petition, the learned Sr. counsel has submitted that the present Assam-type structure of the school in question was constructed in the year 1953-54 by the Managing Committee under the presidentship of (L) Shiekh Md. Ali Jan and Secretary, (L) Shiekh Md. Shafi at a cost of ₹ 8000/- (rupees eight thousand) only being donated by members of the Muslim community. The School Managing Committee thus became the sole caretaker of the said property independent of interference by any outside body including the petitioner/Committee.

18. The claim of the petitioner/Committee that it is the sponsoring body of the said school is without any basis and authority, coupled with the fact that the petitioner/Committee has not even contributed any fund towards the running of the school, not even for the cost of books and uniforms of the students which cost was borne exclusively by the Managing Committee, further submits the learned Sr. counsel.

19. It is also the submission of the learned Sr. counsel that the proposed list of members of the new Managing Committee of the school

by the petitioner/Committee, dated 01.11.2021(Annexure-9 of the petition) is incompetent, firstly, since there was no participation of any of the stakeholders like parents, teachers and guardians. Secondly, this incompetency of the petitioner/Committee is apparent as a look at the Constitution of the petitioner/Committee would reveal that it is strictly a religious body and is not empowered to venture into secular affairs, Hence, the claim that it is the sponsoring body of the school with power to approve the formation of the Managing Committee of the school is not only against the law but even against the provisions of its own constitution.

20. This Court on consideration of the rival claims of the parties, facts of the case which requires no repetition as the same have been enumerated herein above, the questions which are required to be answered are as follows:

- i. Whether the petitioner/Committee is the sponsoring body of the Madrasa Hemayatul Islam L.P. School, Lumdiengjri, Shillong?
- ii. Whether it is mandatory for the constitution of the School Managing Committee to be firstly approved and proposed by the sponsoring body?

21. It is the stand of the petitioner/Committee that in order to achieve its object to establish a school, in the year 1953 the Madrasa Hemayatul Islam L.P. School was set up on the land owned and possessed by the petitioner/Committee. On the school having received its recognition from

the Education Department, Government of Meghalaya under the Deficit Grant-in-Aid Scheme, the Managing Committee of the school was also constituted by the General Body of the petitioner/Committee duly approved by the competent authority.

22. This assertion by the petitioner/Committee was refuted by the respondents when the respondent No. 4 has submitted that the said school was set up in an Assam-type structure constructed by the then Managing Committee in the year 1953-54, albeit on the land given to the school by the then Garikhana Masjid Committee, free of rent and free of cost without any interference in the day-to-day affairs of the school.

23. The petitioner/Committee has laid stress on the fact that on the basis of the enquiry conducted by the Sub-Divisional School Education Officer, Shillong pursuant to order dated 16.05.2018 passed by this Court in WP(C) No. 115 of 2018, wherein vide communication dated 30.05.2018, copy of which was issued upon the Secretary of the petitioner/Committee, the Enquiry Officer has come to a finding that the petitioner/Committee is the sponsoring body as far as reconstitution of the Managing Committee of the Madrasa Hemayatul Islam U.P. School, Lumdiengjri, Shillong.

24. This was refuted by the respondent No. 4 who has referred to the Enquiry Report on Madrasa Hemayatul Islam L.P. and U.P. School filed by Shri. T.S. Lyngdoh, Sub-Inspector of Schools, Shillong and Shri. J.A. Marwein, Sub-Inspector of Schools, Shillong, which report is annexed as Annexure-I in the counter affidavit dated 09.05.2022 filed by the said respondent No. 4 wherein in the said report it has been noted that there is

no record to reveal that the school has a “sponsoring body” and also that the proposals for reconstitution of the Managing Committee of the School was usually done so on a proposal made by the outgoing Managing Committee as per the provision of Rule 4 of Section 11 of the Assam Education Department Rules adopted by the Meghalaya.

25. As contended by the respondent No. 4, that nothing in the constitution of the petitioner/Committee is found to establish the claim that it is the sponsoring body of the said educational institution, namely, the Madrasa Hemayatul Islam School, this Court on perusal of the contents of the constitution of the petitioner/Committee which was brought on record by the petitioner/Committee by way of additional affidavit, has not been able to find any reference made, particularly in the aims and objectives of the Committee as regard the institution and management of educational institutions, though one of the objectives is to impart religious education. There being no specific or direct reference to set up schools and educational institutions, the petitioner/Committee cannot come at this point of time to claim that it is the sponsoring body of the said school in question.

26. In the case of *Arya Samaj & Anr. v. State of Meghalaya & Anr.*, (2000) 3 GLT 656, this Court (as it then was) while dealing with the subject of control over the School Managing Committee by the Arya Samaj has come to the conclusion that the constitution of the School Managing Committee is to be done so only in terms of the Memorandum of Association of the Arya Samaj, wherein the objectives incorporated in Article 3 of the Memorandum, inter alia, include establishment of schools

and educational institutions. Para 13 of the same being relevant to the case herein, the same is reproduced as follows:

“13. Article 38 of the Memorandum of Association vests some restricted powers with the State authorities. It reads as follows:-

"38. The President of Arya Samaj shall be the President of the Managing Committee or ad-hoc Committees if constituted by the Government of all the educational institutions under the control supervision of the Arya Samaj Shillong and functioning under the Arya Samaj Shillong."

The provisions of Article 38 clearly show that if the Managing Committees or ad-hoc committees of the educational institutions of the Arya Samaj are constituted by the Government, the President of such committees shall have to be the President of Arya Samaj only... ”

27. The above demonstrates the fact that for a body organisation such as the petitioner/Committee herein to be reckoned as a sponsoring body of an educational institution/school, the same has to be specifically mentioned in its constitution which is not the case herein. However, as has been admitted by the respondent No. 4, the claim of the petitioner/Committee that it is the sponsoring body of the school and hence is the authority to propose the constitution of the Managing Committee of the school is an issue of disputed facts which cannot be raised herein, has to be considered by this Court taking into account the fact that this issue has to be settled once and for all, although before a proper forum, more particularly, the civil court of competent jurisdiction.

28. The answer to the first issue would be that the matter is left to be decided by a competent court as disputed issues of facts have been raised as regard the claim of the petitioner/Committee that it is the sponsoring

body of the said school in question.

29. As to the next issue, since relevant rules have been prescribed as far as the manner and mode of proposal and approval of the School Managing Committee is concerned, that is, that it is the for Secretary of the outgoing Managing Committee to send the proposal to the relevant authorities in the Education Department of the Government for approval, therefore, since there is nothing in the law or rules to say that for the approval of the list of Managing Committee members, the same has to be proposed and forwarded through or by the sponsoring body, the second issue has, therefore, to be answered in the negative.

30. The case of Rai Bahadur Anup Chand Hindi High School, Shillong(supra) relied upon by the petitioner/Committee with due respect, has no relevance to the issues raised in this petition, inasmuch as there are no pleadings as far as the issue of whether the school in question is a minority school or not. As to the question whether the list proposed by the petitioner/Committee has to be approved by the relevant authorities, since the issue of whether the petitioner/Committee is the sponsoring body of the said school is left to be decided later in a proper forum, the judgment relied upon will also not help the petitioner/Committee.

31. In the case of Arya Samaj(supra) cited by the petitioner/Committee, this Court having noticed the fact that the term of the Managing Committee in question would soon expire in about four months' time has decided not to interfere with the constitution of the same at that point of time and has left the issue agitated before it to be considered by the relevant authority as and when the reconstitution of the new

Managing Committee occur.

32. Under similar circumstances apparent in this instant case, wherein the term of the Managing Committee under scrutiny would expire in the month of August, 2024, this Court too is not inclined to interfere with the term of such Managing Committee and would leave the issue as regard the claim of the petitioner/Committee that it is the sponsoring body at the said school to be decided by a competent authority as has been indicated hereinabove as and when the same comes up for consideration.

33. Consequently, the impugned order dated 20.08.2021 at Annexure-10 of this petition is not interfered with at this juncture. Resultantly, the proposed list dated 01.11.2021 (Annexure-9), submitted by the petitioner/Committee shall not be taken into consideration by the competent authority.

34. In view of the above, this petition is disposed of. No costs.

Judge

Meghalaya
14.03.2024
"Tiprilynti-PS"