

GAHC010187242022



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

Case No. : WP(C)/6050/2022

MIZANUR AHMED AND ANR.
S/O- YEAZUDDIN AHMED, VILL. NO. 1 SONAPUR, P.O. SONAPUR, DIST.
LAKHIMPUR, ASSAM

2: MONSUR ALI
S/O- ABDUL KADIR
VILLAGE NO. 1 SONAPUR
P.O. SONAPUR
DIST. LAKHIMPUR
ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, EDUCATION (SECONDARY) DEPARTMENT,
DISPUR, GUWAHATI-781006.

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM KAHILIPARA GUWAHATI-781019.

3:THE INSPECTOR OF SCHOOLS LAKHIMPUR DISTRICT CIRCLE
NORTH LAKHIMPUR DIST. LAKHIMPUR ASSAM PIN- 787001.

4:THE DEPUTY COMMISSIONER LAKHIMPUR
P.O. NORTH LAKHIMPUR DIST. LAKHIMPUR
ASSAM PIN- 787001.

5:THE PRINCIPAL SONAPUR MADRASSA H.S. SCHOOL
P.O. SONAPUR DIST. LAKHIMPUR ASSAM PIN- 787054.

6:THE SCHOOL MANAGEMENT AND DEVELOPMENT COMMITTEE
OF SONAPUR MADRASSA H.S. SCHOOL REPRESENTED BY ITS
PRESIDENT P.O. SONAPUR DIST. LAKHIMPUR ASSAM PIN- 787054.

7:MD. ASSAD ULLAH S/O- LATE SALAMAT ALI
VILLAGE NO. 1 SONAPUR P.O. SONAPUR DIST. LAKHIMPUR
ASSAM PIN- 787054

Advocate for the Petitioner : MR J ABEDIN
Advocate for the Respondent : GA, ASSAM (R-4)

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 01.05.2024

Heard Mr. D. A. Kaiyum, learned counsel for the petitioners. Also heard Mr. S. M. T. Chistie, learned standing counsel, Secondary Education Department, appearing on behalf of Respondents No. 1, 2 & 3; and Ms. Deepanjalee Das Barman, learned Additional Senior Government Advocate, appearing on behalf of Respondent No. 4. However, none has appeared on behalf of Respondents No. 5 & 6 although an affidavit has been filed on behalf of Respondent No. 5 in the matter.

2. As regards the Respondent No. 7; it is to be noted that the petitioners have filed an affidavit wherein, in terms of the liberty granted by this Court for service of notice upon the Respondents No. 5, 6 & 7 by way of *dasti* mode; the service was so effected, however, on a copy of the said notice being presented to the Respondents No. 6 and 7, in the presence of witnesses as named in the said affidavit; the Respondents No. 6 & 7 refused to receive the same. Accordingly, this Court, had held, vide order, dated 26.02.2024, that the service of notice upon the Respondents No. 7 is deemed to be complete.

3. As consented to by the learned counsels appearing for the parties; this

writ petition is taken-up for final consideration and disposal.

4. The petitioners, have, by way of instituting the present proceeding, presented a challenge to a communication, dated 19.04.2022, issued by the Inspector of Schools, Lakhimpur District Circle, North Lakhimpur, nominating the Respondent No. 7 as the President of the School Management & Development Committee(SMDC) of Sonapur Madrassa Higher Secondary School and thereby, constituting the School Management & Development Committee(SMDC) for the said school vide order, dated 24.05.2022.

5. The petitioners have further prayed for a direction upon the respondent authorities for initiation of a fresh process in the matter strictly in accordance with the guidelines as notified vide the Notification, dated 27.06.2016.

6. The facts as requisite for consideration of the issues as arising in the present proceeding, is noticed as under:

The petitioners have projected in the writ petition that pursuant to a communication, dated 18.09.2021, issued by the Additional Secretary to the Government of Assam, Education (Secondary) Department, requiring the Director, Secondary Education Department, Assam, to submit a panel of names for nomination against the post of President and Vice-President of the School Managing Committees(SMCs) of various provincialized schools; the jurisdictional Inspector of Schools, vide a communication, dated 27.09.2021, had required all Headmasters/Principals of High Schools and Higher Secondary Schools under his

jurisdiction, to submit proposals containing the names of 2(two) persons each for the posts of President and Vice-President of the School Managing Committees(SMCs) of the schools in terms of the guidelines as notified vide the Notification, dated 27.06.2016.

It is the contention of the petitioners that in terms of the directions as contained in the communication, dated 18.09.2021; no meeting as mandated to be so convened by the Principal of the said school, was so convened and no proposal for processing the nomination to the posts of President and Vice-President of the School Management & Development Committee(SMDC) of the school, in question, was so furnished by the school authorities in the matter.

Poised thus, the petitioners were surprised to come across a communication, dated 19.04.2022, by which the Principal of the said school was informed that the Respondent No. 7, herein, along with one Mizanur Rahman were nominated as the President and Vice-President of the School School Management & Development Committee(SMDC) of the school, in question, and the Principal was further directed to take steps for constitution of the School Management & Development Committee(SMDC) in terms of the Government norms and guidelines.

Thereafter, the School Management & Development Committee(SMDC) was constituted by the Principal of the said school and the same was granted approval by the jurisdictional Inspector of Schools on 24.05.2022.

The petitioners being aggrieved by the action on the part of the respondent authorities in nominating the Respondent No. 7 to the post of President of the School Management & Development Committee(SMDC) of the said school strictly in violation of the procedure as mandated in this connection in the said Notification, dated 27.06.2016; had approached the authorities by way of filing representations and having not received any response thereon, the present proceeding has been so instituted assailing the nomination as made in the matter by the jurisdictional Inspector of Schools vide the communication, dated 19.04.2022, along with the approval as granted to the constitution of the School Management & Development Committee(SMDC) of the said school on 24.05.2022.

7. Mr. Kaiyum, learned counsel for the petitioners, after reiterating the facts as noticed hereinabove, has submitted that the name of the Respondent No. 7, herein, was not so proposed by the school authorities as mandated under the guidelines as notified vide the Notification, dated 27.06.2016. It is contended that the jurisdictional Inspector of Schools had not carried-out any consultation with the Principal of the said school and/or the local people before forwarding the name of the Respondent No. 7 for nomination against the post of President of the School Management & Development Committee(SMDC) of the school, in question.

8. Mr. Kaiyum, learned counsel, by referring to the contentions as made in the writ petition as well as materials available on record, has contended that the Respondent No. 7 has an active political career and accordingly, in terms of the prescriptions as made in the said Notification, dated 27.06.2016; the

Respondent No. 7 is not eligible for being nominated as the President of the School Management & Development Committee(SMDC) of the school, in question, which requires a person so nominated to the post of President of the School Management & Development Committee(SMDC) of the school, to have no political career.

9. Mr. Kaiyum, learned counsel, basing on the said submission and emphasizing on the point that the nomination as effected in the case of Respondent No. 7 being in violation of the guidelines as notified vide the Notification, dated 27.06.2016; has contended that the same cannot be sustained and requires this Court to interfere with the same along with an interference with the constitution of the School Management & Development Committee(SMDC) of the said school which was so approved by the jurisdictional Inspector of Schools on 24.05.2022.

10. Mr. Chistie, learned standing counsel, Secondary Education Department, has fairly submitted before this Court that the prescriptions as made in the Notification, dated 27.06.2016, is binding on all concerned including the departmental officials and no one can act in derogation thereof.

11. Mr. Chistie, learned standing counsel, Secondary Education Department, has further submitted that in the event, this Court is of the view that the guidelines as notified vide the Notification, dated 27.06.2016, has not been complied with in the matter of re-constitution of the School Management & Development Committee(SMDC) of the said school; this Court may be pleased

to interfere with such constitution of the School Management & Development Committee(SMDC) of the school, in question, along with the nomination as made in respect of Respondent No. 7 as its President.

12. Ms. Barman, learned Additional Senior Government Advocate, by referring to an affidavit filed by the Respondent No. 4 in the matter, has submitted that upon receipt of the representations in the matter pertaining to the nomination of the Respondent No. 7 as the President of the School Management & Development Committee(SMDC) of the said school; an inquiry into the matter was directed vide order, dated 29.09.2022, and accordingly, the Inquiry Officer i.e. the Circle Officer, Bihpuria Revenue Circle, had submitted his report on 30.10.2022, and therein, it was brought on record that the Respondent No. 7 is still an active political worker and the same was so stated in the statements made by the Respondent No. 7 in the inquiry.

13. It was further brought on record that the Respondent No. 7 in his statement, had stated that he was appointed as the Vice-President of the Minority Morcha of Bharatiya Janata Party, Karunabari Mandal Committee but he was unaware of his such appointment and had applied for resignation from the said post on 15.03.2022. However, it was stated that no document towards acceptance of the resignation as submitted by the Respondent No. 7 was produced during the course of the inquiry. However, subsequently, it was held that a document was produced, signed on 29.10.2022, wherein, it was contended by the authority issuing the communication that the Respondent No. 7 was not holding any post in the party w.e.f. 15.03.2022.

14. The said report also brings on record certain allegations against the Respondent No. 7 after his nomination as the President of the School Management & Development Committee(SMDC) of the said school.

15. I have heard the learned counsels appearing for the parties and also perused the materials brought on record.

16. For appreciating the rival contentions of the parties to this proceeding; this Court is required to examine as to the applicability of the Notification, dated 27.06.2016, in the light of the subsequent Notification, issued in the matter on 27.10.2021.

17. The respondent authorities in the Secondary Education Department, Assam, had vide Notification, dated 27.06.2016, laid down the procedures for constitution of the School Management & Development Committee (SMDC) of Higher Secondary Schools, Junior Colleges, Secondary Schools and High Madrassas in the State. In terms of the provisions of the said guidelines as notified vide Notification, dated 27.06.2016, a person eligible for being nominated as the President and Vice-President of the School Management & Development Committee(SMDC) is to be a local educated, reputed citizen having no political career. It was also further stipulated that the President and Vice-President should not be more than 65 years of age and should have a minimum qualification of graduation in any discipline. It was also further mandated that any person to be nominated as a President or a Vice-President of the School Management & Development Committee(SMDC) should not have

contested any election at any level starting from the panchayat level for the last 20 years.

18. The selection process as mandated under the guidelines vide Notification, dated 27.06.2016, required the Inspector of Schools, to forward 2(two) names each for the posts of President and Vice-President after due consultation with the Principal/Headmaster of the school and the local residents along with the recommendation of the Deputy Commissioner. The Director of Secondary Education Department, Assam, is thereafter required to provide the list to the Government with his comment for selecting a single name after comparing the data of both the candidates and thereafter, it is for the Government to approve the names of the candidates for nomination as the President and Vice-President of the said School Management & Development Committee(SMDC).

19. Vide the Notification, dated 27.10.2021; the guidelines as notified vide the Notification, dated 27.06.2016, came to be modified and it was mandated that the Deputy Commissioner is now empowered to select the President and Vice-President of a School Management & Development Committee(SMDC) of an educational institution of the concerned district with the approval of the Guardian Minister of the district concerned.

20. The effect of the Notification, dated 27.10.2021, is that the authority to select persons for nomination as the President and Vice-President of the School Management & Development Committee(SMDC) as provided in the earlier guidelines notified vide Notification, dated 27.06.2016, came to be modified,

and such power was reposed with the Deputy Commissioner of the district who was now required to make the selection, however, with the approval of the Guardian Minister.

21. The Notification, dated 27.10.2021, does not in any manner effect the other provisions of the guidelines including the manner in which a panel is required to be prepared containing the names of persons eligible in terms of the guidelines as contained in the said Notification, dated 27.06.2016, for nomination as the President and Vice- President of the School Management & Development Committee(SMDC) of the school.

22. Having noticed the purport of the Notification, dated 27.10.2021, and also having concluded that the other process mandated under the Notification, dated 27.06.2016, with regard to preparation of a panel for effecting such nomination having not been modified; the facts in the present proceedings, is now being considered.

23. It is seen that the name of the Respondent No. 7, herein, was not so forwarded by the school authorities in terms of the guidelines as notified vide the Notification, dated 27.06.2016. The Respondent No. 5 i.e. Principal of the said school, in the affidavit as filed by him in the matter, has stated that no meeting of the parents/guardians of the students studying in the school, in question, was held for empanelment of names of persons for nomination to the posts of President and other members of the School Management & Development Committee(SMDC) of the said school.

24. It was contended that in pursuance of the communication, dated 27.09.2021, issued by the jurisdictional Inspector of Schools; the Respondent No. 5 had convened a meeting of the School Management & Development Committee(SMDC) and staff of the said school and after a brief discussion, submitted the names of one Nazarul Islam and Mizanur Rahman for nomination to the post of President and the names of 2(two) other persons for the post of Vice-President of the School Management & Development Committee(SMDC) of the school, in question. However, the said nomination was so made without convening any meeting of the parents/guardians of the students studying in the school and also the local people. The Respondent No. 5 has categorically stated that the name of the Respondent No. 7 was never empanelled in the proposal as forwarded by the school authorities in the matter for nomination against the post of President of the School Management & Development Committee(SMDC) of the said school.

25. The Respondent No. 5 has contended that he came to know about the name of the Respondent No. 7 as the President of the School Management & Development Committee(SMDC) of the school, in question, only on receipt of a communication, dated 19.04.2022, issued by the jurisdictional Inspector of Schools nominating the Respondent No. 7 as the President of the School Management & Development Committee(SMDC) of the said school, requiring the Respondent No. 5 to constitute the School Management & Development Committee(SMDC) of the school, in question.

26. The affidavit as filed in the matter by the respondent No. 4, brings on record, a report submitted by the Circle Officer, Bihpuria Revenue Circle, on

30.10.2022, pursuant to an inquiry as conducted by him in the matter pertaining to the allegations that were so raised against the nomination of the respondent No. 7 and other members of the School Management & Development Committee(SMDC) of the school, in question.

27. The said Inquiry Report clearly brings to the forefront the fact that the respondent No. 7, herein, at least, prior to 15.03.2022, had a career in politics. The guidelines as available in the matter, categorically mandates that the person to be nominated as the President of the School Management & Development Committee(SMDC) of the school, should have no political career. The inquiry as conducted in the matter at the instance of the jurisdictional Deputy Commissioner, having brought on record the fact that the Respondent No. 7 had a political career at least prior to 15.03.2022; the nomination of the Respondent No. 7 in addition to being so effected in violation of the procedures prescribed under the guidelines as notified vide the Notification, dated 27.06.2016; the Respondent No. 7, in view of his active political career at least prior to 15.03.2022, is not eligible for having being considered for nomination against the post of the President of the School Management & Development Committee(SMDC) of the said school.

28. In view of the above conclusions as reached in the matter by this Court hereinabove and admittedly, the name of the Respondent No. 7 being ineligible for nomination to the post of President of the School Management & Development Committee(SMDC) in the said school; the nomination as made in respect of the Respondent No. 7, herein, by the jurisdictional Inspector of Schools vide communication, dated 19.04.2022, cannot be sustained and

accordingly, the same stands interfered with to the extent of the nomination made in respect of the Respondent No. 7, herein, to the post of President of the School Management & Development Committee(SMDC) of the said school.

29. There being no challenge to the communication, dated 19.04.2022, to the extent of the nomination made through it in respect of the post of Vice-President of the School Management & Development Committee(SMDC) of the said school; this Court is not interfering with the nomination so made.

30. However, considering the fact that the petitioner has also presented a challenge to the constitution of the School Management & Development Committee(SMDC) of the said school itself and the approval as granted to the same on 24.05.2022 by the jurisdictional Inspector of Schools; the said issue is now remanded back to the jurisdictional Deputy Commissioner who shall now consider as to whether the nomination made in respect of the persons constituting the School Management & Development Committee(SMDC) was so made in accordance with the guidelines as notified vide the Notification, dated 27.06.2016, and also shall examine as to whether the nomination as made vide the communication, dated 19.04.2022, in the case of Mizanur Rahman against the post of the Vice-President of the School Management & Development Committee(SMDC) of the school, in question; stands vitiated on the same, also not having been so effected in terms of the procedure mandated under the guidelines as notified vide the Notification, dated 27.06.2016.

31. The jurisdictional Deputy Commissioner while proceeding to make the said

consideration, shall give an opportunity of hearing to the person nominated against the post of Vice-President of the School Management & Development Committee(SMDC) of the said school vide the communication, dated 19.04.2022, along with the other constituents of the said School Management & Development Committee(SMDC) who have been so nominated as its members.

32. Thereafter, the jurisdictional Deputy Commissioner on arriving at its due conclusions in the matter, shall proceed further basing thereon.

33. In view of the said position and appreciating the fact that the School Management & Development Committee (SMDC) of the school along with the President and Vice- President of the School Management & Development Committee(SMDC) is of utmost importance for the smooth functioning of Sonapur Madrassa Higher Secondary School; the Director, Secondary Education Department, Assam, is hereby directed to forthwith direct the Inspector of Schools, Goalpara, to take appropriate steps for an early constitution of the School Management & Development Committee(SMDC) of Sonapur Madrassa Higher Secondary School along with the steps requisite for nomination of the eligible persons as President and Vice-President of the School Management & Development Committee(SMDC) of the said school.

34. The process that would now be required to be carried- out, shall be so carried-out strictly in terms of the guidelines notified vide Notification, dated 27.06.2016, *read with* the subsequent Notification, dated 27.10.2021.

35. The aforesaid exercise of nominating the President and Vice-President of the School Management & Development Committee(SMDC) and also constitution of the School Management & Development Committee (SMDC) of Markula High School shall be so carried-out and completed within a period of 2(two) months from the date of a certified copy of this order.

36. Pending constitution of such School Management & Development Committee(SMDC) and nomination of persons as President and Vice-President thereof; the Inspector of Schools, North Lakhimpur, shall function as the President of the School Management & Development Committee(SMDC) of Sonapur Madrassa Higher Secondary School and discharge all responsibilities as attached to the said post, till the School Management & Development Committee(SMDC) of the said school is so constituted in terms of the directions passed hereinabove.

37. With the above observations and directions, this writ petition stands disposed of.

JUDGE

Comparing Assistant