

GAHC010258762023



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

Case No. : WP(C)/7192/2022

ZIAUL ISLAM
S/O. SOFIQUL ISLAM
VILL. AND P.O. ALITANGANI
DIST. NAGAON
PIN-782124.

VERSUS

THE STATE OF ASSAM AND 5 ORS.
TO BE REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
EDUCATION (SECONDARY) DEPTT. DISPUR GUWAHATI-06.

2:THE DIRECTOR SECONDARY EDUCATION ASSAM
KAHILIPARA GUWAHATI-19.

3:THE DEPUTY COMMISSIONER NAGAON ASSAM.

4:THE INSPECTOR OF SCHOOLS NDC NAGAON
ASSAM DIST. NAGAON.

5:THE PRINCIPAL
ALITANGANI OSMANIA HIGHER SECONDARY SCHOOL
VILL. AND P.O. ALITANGANI
DIST. NAGAON ASSAM
PIN-782124.

6:RUKUN UDDIN AHMED
S/O. LT. RIAZ UDDIN AHMED
VILL. AND P.O. DAGAON
DIST. NAGAON PIN-782124.

Advocate for : MR. T J MAHANTA
Advocate for : SC SEC. EDU. appearing for THE STATE OF ASSAM AND 5 ORS.

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

ORDER

Date : 25.01.2024

Heard Mr. T. J. Mahanta, learned senior counsel, assisted by Mr. R. A. Choudhury, learned counsel, appearing on behalf of the petitioner. Also heard Mr. U. Sarma, learned standing counsel, Elementary Education Department; Mr. B. Deuri, learned Government Advocate; Mr. A. K. Azad, learned counsel; and Mr. P. Saikia, learned counsel; appearing on behalf of their respective respondents.

- 2.** With the consent of the parties; this writ petition is taken-up for disposal today.
- 3.** The challenge in the present proceedings, is to the nomination of the respondent No. 6 as the President of the School Managing Committee(SMC) of Alitangani Osmania Higher Secondary School, effected vide communication, dated 08.09.2022, issued by the Inspector of Schools, Nagaon District Circle, Nagaon.
- 4.** The facts requisite for adjudication of the issues arising in the present proceedings, is noticed hereinbelow:

The Inspector of Schools, Nagaon District Circle, Nagaon, vide communication, dated 08.09.2022, requested the Principal, Alitangani Osmania Higher Secondary School, to prepare and forward a panel list of persons, proposed by the parents/guardians and local people, in terms of the guidelines as contained in the Notification, dated 24.06.2016(as amended) for nomination against the posts of President and Vice-President of the school.

The Principal of the school vide communication, dated 20.11.2021, forwarded a panel prepared, consisting of the names of the petitioner and the respondent No. 6 for nomination of any one of them as the President of the School Managing Committee(SMC) of the school. The inclusion of the name of the respondent No. 6 was objected to by the people of the locality along with a section of the parents/guardians of the students studying in the school.

One of the grounds raised against the inclusion of the name of the respondent No. 6 in the panel prepared for the post of President is that the respondent No. 6 was earlier held by the authorities of the Secondary Education Department, to be not eligible to hold the post of President of the School Managing Committee(SMC) of a school in-as-much as it was held that the respondent No. 6 did not fulfill the eligibility criterias as spelt-out in the guidelines as circulated vide the said Notification, dated 24.06.2016.

The Inspector of Schools, Nagaon District Circle, Nagaon, without considering the objections as raised before him with regard to the inclusion of the name of the respondent No. 6 in the panel prepared for the purpose of nomination as the President of the School Managing Committee(SMC) of Alitangani Osmania Higher Secondary School, proceeded vide communication, dated 08.09.2022, to nominate the respondent No. 6 as the President of the School Managing Committee(SMC) of the said school.

It is the said action on the part of the Inspector of Schools, Nagaon District Circle, Nagaon, in nominating the respondent No. 6 as the President of the School Managing Committee(SMC) of Alitangani Osmania Higher Secondary School that is presently under challenge in this writ petition.

5. The petitioner, amongst other grounds, has assailed the nomination of the respondent No. 6 as the President of the School Managing Committee(SMC) of Alitangani Osmania Higher Secondary School on the ground that the respondent No. 6 was earlier nominated as the President of another school i.e. Dagaon A.K. High School, however, the said selection was cancelled. The respondent No. 6 had assailed the cancellation of his nomination before this Court by way of instituting a writ petition being WP(c)1524/2017 and this Court vide order, dated 06.12.2017, had remanded the matter to the Secretary to the Government of Assam, Education(Secondary) Department, for examination of the issue as raised therein. The Secretary to the Government of Assam, Education(Secondary) Department, upon hearing the parties to the proceeding including the respondent No. 6, proceeded vide his order, dated 03.03.2018, to hold that the respondent No. 6 does not fulfill the criterias laid down in the Guidelines as contained in the Notification, dated 24.06.2016, for nomination as the President of the School Managing Committee (SMC) of a school.

6. One of the reasons as assigned in the said order, dated 03.03.2018, for holding the respondent No. 6 to be not eligible, is that the respondent No. 6 was an active political worker and the said position was also stated to have been admitted by the respondent No. 6 in the hearing held prior to issuance of the said order, dated 03.03.2018. The said order, dated 03.03.2018, has not been put to challenge by the respondent No. 6 and accordingly, the same has attained its finality.

7. Mr. Mahanta, learned senior counsel appearing on behalf of the petitioner, by referring to the said order, dated 03.03.2018, has contended that the respondent No. 6 having already been held to be not eligible to be nominated as a President of a School Managing Committee(SMC) of a school and such ineligibility being declared with regard to the provisions of the guidelines as contained in the Notification, dated

24.06.2016; the Notification, dated 24.06.2016, still holding the field with the same stipulations, the respondent authorities in view of the categorical findings recorded in the said order, dated 03.03.2018, could not have nominated the respondent No. 6 as the President of the School Managing Committee(SMC) of Alitangani Osmania Higher Secondary School.

8. Mr. Saikia, learned counsel appearing on behalf of respondent No. 6; on a query made by this Court, has fairly submitted that the said order, dated 03.03.2018, has not been challenged by the respondent No. 6 by instituting an appropriate proceeding. Mr. Saikia, learned counsel, has also submitted that the conclusions as reached in the said order, dated 03.03.2018, of the respondent No. 6 being involved in active political activities, is based on the circumstances as existing at that relevant point of time and the same cannot be said to be existing for all times to come and the respondent No. 6 at the time of nomination as made vide communication, dated 08.09.2022, issued by the Inspector of Schools, Nagaon District Circle, Nagaon, was not involved in any political activities and as such, it is the contention of Mr. Saikia, learned counsel for respondent No. 6, that the nomination of the respondent No. 6 as the President of the School Managing Committee(SMC) of Alitangani Osmania Higher Secondary School, does not call for any interference of this Court in-as-much as the same is in conformity with the provisions of the guidelines as contained in the Notification, dated 24.06.2016.

9. The contentions as advanced by the learned counsels appearing for the parties to the proceedings, have been appreciated by this Court and the materials as made available on record, has been perused.

10. The Notification, dated 24.06.2016, while laying down the procedure for

nomination of a President and Vice-President of a School Managing Committee(SMC) in Secondary Schools has stipulated that a person to be eligible for nomination as the President of the School Managing Committee(SMC) of a school, must be a local educated and reputed citizen having no political career.

11. As noticed hereinabove; the respondent No. 6 was earlier nominated as the President of Dagaon A.K. High School, vide communication, dated 01.11.2016, issued by the Inspector of Schools, Nagaon District Circle, Nagaon. However, on complaint being raised against the respondent No. 6, the Inspector of Schools, Nagaon District Circle, Nagaon, vide his order, dated 21.02.2017, proceeded to cancel the nomination as made in respect of the respondent No. 6 as the President of Dagaon A.K. High School. Being aggrieved, the respondent No. 6 had instituted a writ petition being WP(c)1524/2017 and this Court upon consideration of the issues arising therein, was pleased vide order, dated 06.12.2017, to dispose of the said writ petition by interfering with the order, dated 21.02.2017, with a further direction to the Secretary to the Government of Assam, Secondary Education Department, to examine the public complaints against the petitioner(respondent No. 6 herein) after providing due opportunity of hearing to the petitioner/respondent No. 6. Accordingly, the Secretary to the Government of Assam, Secondary Education Department, held a hearing on 17.01.2018, and the statements of the concerned persons including the respondent No. 6, was taken. Thereafter, vide order, dated 03.03.2018, by recording a finding that the respondent No. 6 is an active political worker, proceeded to hold that the respondent No. 6 does not fulfill the stipulations as laid down in the guidelines as contained in the Notification, dated 24.06.2016, and accordingly, held that the claim of the respondent No. 6 for nomination as the President of the School Managing Committee(SMC) of Dagaon A.K. High School, cannot be considered.

12. The findings as recorded in the said order, dated 03.03.2018, along with the decision thereon, are extracted hereinbelow for ready reference:

“..... Rukum Uddin Ahmed is said to be an active political worker. Rukum Uddin Ahmed in his own statement on 17.1.2018 stated that his candidature had the support of the AIUDF and BJP public and political representatives respectively.

The Guidelines dated 24th June 2016 and the letter dated 7th Dec 2016 issued to constitute the SMDC clearly laid emphasis on a non political management committee in Secondary Schools. Criteria stipulates that the person considered for the post should be of repute and beyond any doubt or suspicion and should not be a serving teacher.

.....

***Order:** After careful consideration of all aspects and on perusal of all the facts and findings and as stated above and that Rukum Uddin Ahmed had been given adequate opportunity of hearing, it is observed that Rukum Uddin Ahmed does not fulfill the criteria and stipulations laid down in the Guidelines No. ASE 416/2014/116 dated 24th June 2016 and the letter dated 7th Dec 2016 issued by the Government to constituted the SMDC. Hence the claim of Rukum Uddin Ahmed for the post of President of the SMDC cannot be considered.”*

13. The said order, dated 03.03.2018, along with the findings as recorded therein, in the absence of a challenge made to it by the respondent No. 6 has continued to hold the field. The guidelines as contained in the Notification, dated 24.06.2016, requiring that a person nominated as the President of a School Managing Committee(SMC) of a school should not have a political career on being considered in the light of the findings as recorded in the said order, dated 03.03.2018, reflects that the respondent No. 6 has not fulfilled the eligibility criterias as set-out in the said Guidelines as published vide Notification, dated 24.06.2016.

14. Accordingly, the respondent No. 6 having been held to have a political career, he is not eligible for being nominated against the post of the President of the School Managing Committee(SMC) of Alitangani Osmania Higher Secondary School and as such, the nomination of the respondent No. 6 as the President of the School Managing Committee(SMC) of Alitangani Osmania Higher Secondary School, cannot be sustained and the same is accordingly interfered with.

15. The Notification, dated 24.06.2016, *read with* a modification made thereon vide Notification, dated 24.07.2021, lays down a specific procedure for nomination of persons as President and Vice-President of a School Managing Committee(SMC) of a school.

16. In the case on hand, although the name of the petitioner was also considered in the panel as forwarded by the Principal of Alitangani Osmania Higher Secondary School vide his vide communication, dated 20.11.2021, the further process with regard to the petitioner not having been undertaken; this Court is not in a position to direct for nomination of the petitioner as the President of the School Managing Committee(SMC) of Alitangani Osmania Higher Secondary School.

17. It is to be noted that in the present proceedings, there is no challenge to the nomination of one Ziaur Rahman as the Vice-President of the School Managing Committee(SMC) of Alitangani Osmania Higher Secondary School, and as such, this Court having interfered with the nomination made in respect of the respondent No. 6 as the President of Alitangani Osmania Higher Secondary School; till the process for a fresh nomination against the said post of President of the school, in question, is concluded, the present Vice-President of the School Managing Committee(SMC) of Alitangani Osmania Higher Secondary School, as nominated vide communication, dated 08.09.2022, issued by the Inspector of Schools, Nagaon District Circle, Nagaon, shall function as the President of the School Managing Committee(SMC) of Alitangani Osmania Higher Secondary School.

18. The respondent authorities are hereby required to initiate a fresh process for nomination against the post of President of the School Managing Committee(SMC) of Alitangani Osmania Higher Secondary School strictly in accordance with the guidelines

as notified vide Notification, dated 24.06.2016, read with Notification, dated 27.10.2021.

19. The process as required to be now undertaken, be so undertaken by the respondent authorities forthwith and concluded within a period of 2(two) months from the date of receipt a certified copy of this order.

20. The petitioner, herein, shall submit a certified copy of this order along with a representation to the Director, Secondary Education Department, as well as the Inspector of Schools, Nagaon District Circle, Nagaon, to take the matter forward.

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

JUDGE

Comparing Assistant