



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

WP(C) No.6054 of 2023

1. Abu Zafar Siddique,
Son of Late Abul Hussain,
Resident of Village: Kadamoni, PO:
Kadamoni, PS: Batadrava, District: Nagaon,
Assam, PIN – 782122, Assam.

2. Nazrul Islam,
Son of Md. Mofizuddin,
Resident of Village: Rampur Pam, PO:
Chalapathar, PS: Batadrava, District:
Nagaon, Assam, PIN – 782122, Assam.

.....Petitioners

-Versus-

1. The State of Assam, represented by the
Secretary to the Government of Assam,
Department of School Education, Guwahati -
781006.

2. The Director of Secondary Education,
Assam, Kahilipara, Guwahati - 781019.

3. The Inspector of Schools, Nagaon
District, PIN – 782001.

4. The Deputy Commissioner, Nagaon,
Assam, PIN – 782001.

5. Md. Hafizur Rahman, President, Rampur Chalapathar Sahed Ali High School, Nagaon, PIN – 782011, Assam.

6. Abul Kalam, Vice-President, Rampur Chalapathar Sahed Ali High School, Nagaon, PIN – 782011, Assam.

.....Respondents

- B E F O R E -
HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

For the Petitioners : Mr. A. Deka, Advocate.

For the Respondents : Mr. U. Sharma, Standing Counsel, Education (Secondary) Department, for respondent Nos.1, 2 & 3.

: Mr. B. Deori, Junior Government Advocate, Assam for respondent No.4.

: Mr. K.M. Mahanta, Advocate for respondent No.5 & 6.

Date of Judgment : 25.04.2024.

JUDGMENT & ORDER (ORAL)

Heard Mr. A. Deka, learned counsel for the petitioners. Also heard Mr. U. Sharma, learned Standing Counsel, Education (Secondary) Department, appearing for the respondent Nos.1, 2 & 3; Mr. B. Deori, learned Junior Government Advocate, Assam, appearing for the respondent No.4 and Mr. K.M. Mahanta, learned counsel appearing for the respondent Nos.5 & 6.

2. The petitioners, by way of instituting the present proceedings, have presented a challenge to a communication dated 29.09.2023 issued by the Inspector of Schools, Nagaon

District Circle, Nagaon nominating the respondent Nos.5 & 6 herein as the President and Vice-President of the School Management & Development Committee of Rampur Chalapathar Sahed Ali High School, Nagaon.

3. The writ petitioners in the writ petition have projected that on expiry of the term of the School Management & Development Committee (SMDC) of Rampur Chalapathar Sahed Ali High School on 31.10.2021, a process was initiated for constituting the SMDC of the said School and accordingly the names of the petitioners came to be nominated as the President and Vice-President of the SMDC of the School in question vide a communication dated 08.09.2022 issued by the Inspector of Schools, Nagaon District Circle, Nagaon.

4. The said nomination as made in respect of the petitioners herein vide the communication dated 08.09.2022 was put to challenge by the School Authorities and the guardians of the students studying therein by way of instituting WP(C) No.6796/2022 before this Court. This Court, vide order dated 19.07.2023, on consideration of the issues arising in the said proceedings and after hearing the learned counsel appearing for the parties, was pleased to hold that the communication dated 08.09.2022 nominating the present petitioners as the President and Vice-President of the SMDC of the School in question was in clear violation of the guidelines as available in this connection in the Notification dated 27.10.2021 and accordingly proceeded to interfere with the same. Thereafter, this Court remanded the matter back to the Deputy Commissioner, Nagaon to initiate a

process for nomination of names against the posts of President and Vice-President of the SMDC of the School in question strictly in accordance with the provisions of the Notifications dated 27.06.2016 and 27.10.2021.

5. It is contended in the writ petition that thereafter although the petitioners had also made a representation before the Inspector of Schools and the Deputy Commissioner for consideration of their respective claims for being nominated as President and Vice-President, respectively, of the SMDC of the School in question, the authorities without following the provisions of the Notifications dated 27.06.2016 and 27.10.2021, proceeded to issue the impugned communication dated 29.09.2023 nominating the respondent Nos.5 & 6 herein as the President and Vice-President of the SMDC of the School in question.

6. Mr. A. Deka, learned counsel for the petitioners, by referring to the material available on record, has contended that admittedly the nominations of the respondent Nos.5 & 6 as made vide the communication dated 29.09.2023 by the Inspector of Schools, Nagaon District Circle, Nagaon was not made in terms of the procedure as laid down in the guidelines contained in the Notification dated 27.06.2016. It is categorically contended by Mr. Deka, learned counsel for the petitioners that the School Authorities were not involved in the process leading to the nominations of the respondent Nos.5 & 6 as the President and Vice-President of the SMDC of the School in question. It is further submitted by the petitioners that they having already been

nominated in the earlier process against the posts in question, their case also ought to have been given a due consideration by the respondent authorities empowered to nominate persons as President and Vice-President of the SMDC of the School in question and the claims of the petitioners not having been considered, the process leading to the nominations of the respondent Nos.5 & 6 herein as the President and Vice-President of the SMDC of the School in question stood vitiated.

7. Accordingly, the learned counsel for the petitioner has submitted that this Court is now called upon to interfere with the process involved towards nominations of the respondent Nos.5 & 6 herein as the President and Vice-President of the SMDC of the School in question and also this Court would be called upon to interfere with the communication dated 29.09.2023, by which the said nominations were so made.

8. Mr. K.M. Mahanta, learned counsel appearing for the respondent Nos.5 & 6, referring to the pleadings and the material as available in the interlocutory application being I.A. (Civil) No.931/2024 as instituted by the respondent Nos.5 & 6 praying for vacation of the *interim* directions passed in the present proceedings by this Court vide an order dated 26.02.2024 has contended that the nominations as made herein in respect of the respondent Nos.5 & 6 were so made by the authorities by due application of mind and after due diligence. It was contended that the matter having been remanded back by this Court in the earlier proceedings to the Deputy Commissioner, Nagaon, the authorities acting on such direction and after calling for

nominations from interested candidates proceeded to nominate the respondent Nos.5 & 6 against the posts of President and Vice-President of the SMDC of the School in question and the said process was so undertaken strictly in accordance with the Notification dated 27.10.2021. It is further contended that the jurisdictional Deputy Commissioner being the authority empowered to effect on such nominations, the respondent Nos.5 & 6 having been so selected as per the recommendation of the jurisdictional Deputy Commissioner with the approval of the Guardian Minister of the district, there exists no irregularity and/or illegality in the nominations so made in respect of the respondent Nos.5 & 6.

9. Mr. Mahanta, learned counsel for respondent Nos.5 & 6 has further submitted that in pursuance to the nominations as made in respect of the respondent Nos.5 & 6 herein, the SMDC of the School was so fully constituted and a meeting of the same was so convened and held on 10.10.2023 with the respondent Nos.5 herein as the President of the same. Mr. Mahanta submits that in view of the fact that the SMDC was so constituted and the respondent Nos.5 & 6 having been nominated as the President and Vice-President of the same and the first meeting of the SMDC having already been held, this Court would be pleased not to interfere with the nominations as made in respect of the respondent Nos.5 & 6 herein in the larger interest of the School as well as the students studying therein. It is contended that in the event an interference is made with the nominations, as made in respect of the respondent Nos.5 & 6 herein, the same would adversely affect the functioning of the School in question.

10. I have considered the submissions advanced by the learned counsel appearing for the parties and have also perused the material available on record.

11. The manner and method of constitution of the SMDC of a Secondary School is prescribed under the Notification dated 27.06.2016. In terms of the said Notification dated 27.06.2016, a person to be eligible for being considered for appointment as President of the SMDC of a School has to be a local educated reputed citizen having no political career. In terms of the guidelines contained in the Notification dated 27.06.2016, it is mandated that the Inspector of Schools, after consultation with the Principal/Headmaster and with local people of the area will forward 2(two) names to the Director of Secondary Education, Assam for the posts of President and Vice-President with the recommendation of the Deputy Commissioner. Upon consideration of the names as forwarded, the Director of Secondary Education, Assam will provide a list to the Government with his comments for selecting a single name after comparing the data of both the candidates and the Government will then approve the committee.

12. The Notification dated 27.06.2016 was partially modified vide issuance of a Notification dated 27.10.2021, and it was provided therein that the power to select the President and Vice-President of the SMDC of a School is vested on the Deputy Commissioner of the District and such selection will be with the approval of the Guardian Minister of the district. It is now to be seen as to whether the subsequent Notification dated 27.10.2021

is an independent one or one which has been issued only in partial modification of the earlier Notification dated 27.06.2016.

13. On a reading of the Notification dated 27.10.2021, it is reflected that the same is issued in partial modification of the guidelines for constitution of the SMDC issued vide the Government Notifications dated 24.06.2016 and 05.04.2017. On a conjoint reading of the Notifications dated 27.06.2016 and 27.10.2021, it is seen that in the Notification dated 27.06.2016, the power of appointment of a President or Vice-President of a SMDC of a School was vested in the Director and the Government. It is this power of effecting appointments that has now been modified vide the Notification dated 27.10.2021 and vested on the Deputy Commissioner of the district concerned with the requirement of having the approval of the Guardian Minister of the district concerned to such nominations. Barring the power of appointment as modified vide the Notification dated 27.10.2021, the other provisions of Notification dated 27.06.2016 continues to hold the field as before.

14. On a query made by this Court to the learned counsels appearing for the parties to the present proceedings as to whether the nominations as made in respect of the respondent Nos.5 & 6 why so made after their names were empanelled in a meeting convened by the School Authorities of the constituents as envisaged in the guidelines as notified vide the Notification dated 27.06.2016, learned counsels appearing for the parties have fairly submitted that the nominations of the respondent Nos.5 & 6 was not so made after their names were empanelled by the School

Authorities in the manner as contemplated under the guidelines as notified vide the Notification dated 27.06.2016.

15. Having noticed the purport of the Notification dated 27.06.2016 as well as the Notification dated 27.10.2021, the issues arising in the present writ petition is being considered

16. On perusal of the Notification dated 27.06.2016, it is clear that the nomination of names for appointment as President and Vice-President of the SMDC of a School has to emanate from the level of the School Authorities at the first instance. The School Authorities, while recommending names for appointment as President and Vice-President of the SMDC of the School in question has to first satisfy itself that the persons so nominated fulfills the requisite eligibility criteria as spelled out in the Notification dated 27.06.2016. The provisions of the guidelines as contained in the Notification dated 27.06.2016 mandates that only a local educated reputed citizen having no political career can be nominated as the President and Vice-President of the SMDC of the School in question. The guidelines contained in the Notification further requires that such person nominated must not have contested any election of Panchayat level/Parliament or Assembly election in the last 20(twenty) years.

17. On the conjoint reading of the said two criteria as mandated in the guidelines as contained in the Notification dated 27.06.2016 for appointment of President and Vice-President of the SMDC in a educational institution, it is clear that the said guidelines requires that the person who is nominated in the said

posts must not be involved in active political activities, or in other words, must not have a career in politics.

18. In the present case, admittedly after the matter was remanded back by this Court to the jurisdictional Deputy Commissioner vide the order dated 19.07.2023 passed in WP(C) No.6796/2022, it is seen that thereafter the School Authorities were not involved in the matter and the nominations of the respondent Nos.5 & 6 was so made directly by the Deputy Commissioner with the approval of the Guardian Minister of the district. The Inspector of Schools, Nagaon District Circle, Nagaon in terms of the directions passed by this Court had, vide communication dated 30.01.2024, apprised this Court through the learned Standing Counsel, Education (Secondary) Department that upon the matter being remanded back by this Court in the earlier proceedings, the Inspector of Schools, Nagaon District Circle, Nagaon received a prayer petition dated 25.07.2023 from the respondent Nos.5 & 6 praying for their nominations as the President and Vice-President of the SMDC of the School in question and the same was also endorsed by the Guardian Minister of the district. Accordingly, on receipt of the said representation from the respondent Nos.5 & 6 with the endorsement of the Guardian Minister of the district, the matter was placed for approval of the Deputy Commissioner, Nagaon and thereafter on receipt of such approval, the Inspector of Schools, Nagaon, vide communication dated 29.09.2023, proceeded to nominate the respondent Nos.5 & 6 as the President and Vice-President of the SMDC of the School in question.

19. The communication dated 30.01.2024 of the Inspector of Schools, Nagaon District Circle, Nagaon clearly brings on record the fact that the nominations in respect of the respondent Nos.5 & 6 herein were admittedly not made in terms of the procedure as mandated in the guidelines as notified vide the Notification dated 27.06.2016. As noticed hereinabove, the process of nominations of the names of persons against the posts of President and Vice-President of the SMDC has to be initiated strictly in consultation with the Principal/Headmaster of the School in question and the local people of the area. The said procedure admittedly has not been followed in the present case.

20. As noticed hereinabove, the process for constituting the SMDC of the School in question was initiated after the directions passed by this Court in the earlier round of litigation only by considering the representation submitted by the respondent Nos.5 & 6, which had the endorsement of the Guardian Minister of the district. The said process undertaken in the matter being in clear violation of the procedure as mandated in the Notification dated 27.06.2016, the nomination as finally made in respect of the respondent Nos.5 & 6 herein vide the communication dated 29.09.2023 stands vitiated and the same cannot be permitted to hold the field. It is accordingly held that the nominations of the respondent Nos.5 & 6 vide the said communication dated 29.09.2023 being in clear violation of the guidelines holding the field in the matter and notified vide the Notification dated 27.06.2016 cannot be sustained and accordingly, the communication dated 29.09.2023 and the process as initiated for issuance of the same, both stand set aside and quashed.

21. The respondent authorities are now directed to process the matter for nomination of the names of the President and Vice-President of the SMDC of the School in question strictly in accordance with the provisions of the Notification dated 27.06.2016 and the Notification dated 27.10.2021. It is provided that the panel of names as required in the matter on being obtained from the School Authorities in the manner as contemplated under the provisions of the Notification dated 27.06.2016, the same would be placed before the jurisdictional Deputy Commissioner, who would select the persons now to be nominated as the President and Vice-President of the SMDC of the School in question and thereafter on obtaining approval from the Guardian Minister of the district to such selection in terms of the Notification dated 27.10.2021, proceed to nominate the selected persons against the posts of President and Vice-President of the SMDC of the School in question.

22. The above exercise shall be initiated and concluded by the respondent authorities within a period of 3(three) months from the date of receipt of a certified copy of this order either from the writ petitioners or from the respondent Nos.5 & 6. The writ petitioners and/or the respondent Nos.5 & 6 are now required to furnish a certified copy of this judgment & order to the jurisdictional Inspector of Schools for taking the matter forward. It is provided that in view of the fact that the nominations of the respondent Nos.5 & 6 have now been interfered with by this Court, the jurisdictional Inspector of Schools shall now take over the charge of the post of President and function in the said capacity till the nomination as required to

be made against the posts of President and Vice-President of the SMDC of the School in question is so made strictly in accordance with the directions as passed hereinabove by this Court.

23. With the above observations and directions, the writ petition stands disposed of. Needless to say that the *interim* order dated 26.02.2024 passed by this Court in the present proceedings is hereby vacated.

J U D G E

Comparing Assistant