



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

Case No. : WP(C)/8280/2022

MUSHARRAF HUSSAIN AND ANR
S/O LT. HATEM ALI VILL BAMUNDANGA PT-II P.O. MARKULA P.S
LAKHIPUR DIST. GOALPARA ASSAM, PIN-781320

2: ROBIUL ISLAM
S/O NAZIR UDDIN VILL AND P.O. MARKULA P.S BAGUAN DIST.
GOALPARA ASSAM
PIN-78132

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
SECONDARY EDUCATION DEPTT. DISPUR GUWAHATI-781006

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

3:THE DEPUTY COMMISSIONER GOALPARA
P.O. AND P.S. AND DIST. GOALPARA ASSAMPIN-783101

4:THE ADDL. DEPUTY COMMISSIONER (EDUCATION) GOALPARA
P.O. AND P.S. AND DIST. GOALPARA ASSAMPIN-783101

5:THE INSPECTOR OF SCHOOLS G.D.C. GOALPARA
P.O. AND P.S. AND DIST. GOALPARA ASSAMPIN-783101

6:THE HEAD MASTER
MARKULA HIGH SCHOOL P.O. MARKULA P.S BAGUAN
DIST. GOALPARA ASSAM PIN-783120

7:ASHIKUR RAHMAN
S/O HOBIBOR RAHMAN
VILL. LEMPARA P.O. MARKULA P.S. BAGUAN DIST. GAOLPARA ASSAM
PIN-783120

8:REJABUL HOQUE
S/O JOBED ALI VILL. PANDOBA P.O. MARKULA P.S. BAGUAN DIST.
GAOLPARA ASSAM PIN-78312

Advocate for the Petitioner : MR. M ALI

Advocate for the Respondent : GA, ASSAM

Linked Case : I.A.(Civil)/1862/2023

ASHIKUR RAHMAN
S/O HOBIBOR RAHMAN
VILL. LEMPARA
P.O. MARKULA
P.S. BAGUAN
DIST. GAOLPARA
ASSAM
PIN-783120

VERSUS

MUSHARRAF HUSSAIN AND 5 ORS.
S/O LT. HATEM ALI
VILL BAMUNDANGA PT-II
P.O. MARKULA
P.S LAKHIPUR
DIST. GOALPARA
ASSAM
PIN-781320

2:ROBIUL ISLAM S/O NAZIR UDDIN VILL AND P.O. MARKULA
P.S BAGUAN DIST. GOALPARA ASSAM PIN-781320

3:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
SECONDARY EDUCATION DEPTT. DISPUR GUWAHATI-781006

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KAHILIPARA GUWAHATI-781019

5:THE DEPUTY COMMISSIONER GOALPARA
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6:THE ADDL. DEPUTY COMMISSIONER (EDUCATION) GOALPARA
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P.O. AND P.S. AND DIST. GOALPARA ASSAM PIN-783101

8:THE HEAD MASTER MARKULA HIGH SCHOOL P.O. MARKULA P.S
BAGUAN DIST. GOALPARA ASSAM PIN-783120

Advocate for : MR F Z MAZUMDER

Advocate for : M ALI appearing for MUSHARRAF HUSSAIN AND 5 ORS.

Linked Case : I.A.(Civil)/1548/2023

ASHIKUR RAHMANS/O HOBIBOR RAHMAN
VILL. LEMPARA P.O. MARKULA P.S. BAGUAN DIST. GAOLPARA ASSAM
PIN-783120

VERSUS

MUSHARRAF HUSSAIN AND 11 ORS.
S/O LT. HATEM ALI VILL BAMUNDANGA PT-II P.O. MARKULA P.S LAKHIPUR
DIST. GOALPARA ASSAM PIN-781320

2:ROBIUL ISLAM
S/O NAZIR UDDIN VILL AND P.O. MARKULA P.S BAGUAN DIST. GOALPARA
ASSAM PIN-781320

3:THE DIRECTOR OF SECONDARY EDUCATION ASSAM
KAHILIPARA GUWAHATI-781019

4:THE DEPUTY COMMISSIONER GOALPARA
P.O. AND P.S. AND DIST. GOALPARA ASSAMPIN-783101

5:THE ADDL. DEPUTY COMMISSIONER (EDUCATION) GOALPARA
P.O. AND P.S. AND DIST. GOALPARA ASSAMPIN-783101

6:THE INSPECTOR OF SCHOOLS G.D.C. GOALPARA
P.O. AND P.S. AND DIST. GOALPARA ASSAMPIN-783101

7:THE HEAD MASTER MARKULA HIGH SCHOOLP.O. MARKULA P.S
BAGUAN DIST. GOALPARA ASSAM PIN-783120

8:THE STATE OF ASSAMREPRESENTED BY THE COMMISSIONER AND
SECRETARY TO THE GOVT. OF ASSAM SECONDARY EDUCATION
DEPARTMENT DISPUR GUWAHATI-781006

Advocate for : MR F Z MAZUMDER

Advocate for : MR. M ALI appearing for MUSHARRAF HUSSAIN AND 11 ORS.

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

ORDER

Date : 15.02.2024

Heard Mr. M. Ali, learned counsel for the petitioners. Also heard Mr. Bedanta Kaushik, learned standing counsel, Secondary Education Department, appearing on behalf of Respondents No. 1, 2 & 5; Ms. Deepanjalee Das Barman, learned Addl. Senior Government Advocate, appearing on behalf of Respondents No. 3 & 4; and Mr. F. Z. Mazumdar, learned counsel, appearing on behalf of Respondent No. 7. However, none appears on behalf of Respondent No. 8.

2. The petitioners by way of instituting the present proceedings, have assailed a communication, dated 16.12.2022, issued by the Inspector of Schools, Goalpara District Circle, Goalpara, nominating the Respondents No. 7 and 8 as the President and Vice-President, respectively, of the School Management & Development Committee(SMDC) of Markula High School with a further direction to the Headmaster of the said school to constitute the School Management & Development Committee(SMDC).

3. The petitioners have contended that in pursuance of a direction issued by the Inspector of Schools, Goalpara, to all the Heads of the Institutions falling under his jurisdiction to submit a panel of 2(two) names against the post of President and Vice-President for re-constitution of the School Management & Development Committee(SMDC) of the respective schools; the Headmaster of Markula High School had convened a General Meeting on 04.10.2021 and in terms of the resolutions as adopted in the said Meeting, the names of the

petitioners along with 2(two) others were forwarded for nomination as President and Vice-President of the School Management & Development Committee(SMDC) of the said school. It is contended that the matter on being processed; the Inspector of Schools, Goalpara, vide the communication, dated 16.12.2022, nominated the names of the Respondents No. 7 and 8 as the President and Vice-President, respectively, of the School Management & Development Committee(SMDC) of Markula High School with further direction to the Headmaster of the said school to constitute the School Management & Development Committee(SMDC).

4. The petitioners have contended that the nomination of the Respondent No. 7 was so made in clear violation of the procedure as laid down in this connection in the guidelines notified vide Notification, dated 27.06.2016, *read with* the Notification, dated 27.10.2021, in addition to the fact that the Respondent No. 7 could not have been so nominated in-as-much as he had a career in politics, his name was not recommended by the School authorities for the purpose. With regard to the nomination as made on behalf of Respondent No. 8, it was contended that in addition to his nomination not being recommended for the post of Vice-President of the School Management & Development Committee(SMDC) of Markula High School, he was ineligible for such nomination, being a student pursuing his studies in a Masters course in the Tezpur University.

5. The contention of Respondent No. 7, as evident from the pleadings in the Interlocutory Application being IA(c)1548/2023, which was disposed of on 18.12.2023, is that the guidelines as notified vide the Notification, dated

27.06.2016, were modified vide the Notification, dated 27.10.2021, and in terms of the Notification, dated 27.10.2021, it is the Deputy Commissioner who is empowered to select the President and Vice-President of the School Management & Development Committee(SMDC) of an educational institution but such selection is to be made with the approval of the Guardian Minister of the district. The Respondent No. 7 has further contended that the Guardian Minister of the district having recommended the name of the Respondent No. 7 against the post of President of the School Management & Development Committee(SMDC) of Markula High School, the same satisfies the requirement of the procedure as laid down in the Notification, dated 27.10.2021 and the same therefore does not call any interference from this Court. The Respondent No. 7 has also contended that he had never contested any election at any level and he earlier was associated with a particular political party but subsequently, had departed from the said political party prior to the approval of his name as the President of the School Management & Development Committee(SMDC) of Markula High School.

6. The Respondent No. 7 has also by way of filing an additional affidavit-in-opposition, submitted that the petitioner No. 1 is also an active member of a particular political party and has brought on record a visiting card of the petitioner No. 1 in this connection.

7. The learned counsels for the parties have made their submissions in the line with the pleadings as submitted by them in the matter and as noticed hereinabove.

8. 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.

9. 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.

10. 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).

11. 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 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.

12. 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.

13. 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.

14. 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.

15. In terms of the procedure as mandated for preparation of a panel as provided for in the Notification, dated 27.06.2016, the names of the petitioners were forwarded along with 2(two) others for the posts of President and Vice-President respectively. However, it is seen that the name of the Respondent No. 7 was not so incorporated in the panel as forwarded by the Inspector of Schools to the Deputy Commissioner of the concerned district.

16. The materials as brought on record reveals that the name of the Respondent No. 7 was incorporated by the Guardian Minister and accordingly, he came to be so nominated as the President of the School Management & Development Committee(SMDC) of Markula High School.

17. The contention of the Respondent No. 7 in the present proceedings, is that the Notification, dated 27.10.2021, empowers the Deputy Commissioner to make such selection and accordingly, it has to be construed that the nomination as made in the case of Respondent No. 7, was so made on selection made by the jurisdictional Deputy Commissioner.

18. To appreciate the said contention, it is requisite to examine the contentions as brought on record by the Deputy Commissioner, Goalpara, by way of filing an affidavit in the matter.

19. In the affidavit as filed by and on behalf of the Deputy Commissioner, Goalpara, it has been categorically stated that the Guardian Minister had approved the name of the Respondent No. 7 as the President of the School Management & Development Committee(SMDC) of the Markula High School and the name of the Respondent No. 8 as the Vice-President as the Vice-President of the School Management & Development Committee(SMDC) of the said school although their names were not forwarded from the Office of the Deputy Commissioner, Goalpara. The said contention as made in the affidavit by the Deputy Commissioner, Goalpara, clearly contradicts the contention as made by the Respondent No. 7 in the present proceedings in-as-much it is the contention of the Respondent No. 7 that the nomination so made in his case, was so made after he was so selected by the Deputy Commissioner for the purpose, which contention, now in view of the categorical stand of the Deputy Commissioner, Goalpara, stands negated.

20. Accordingly, it is held that the nomination of the Respondent No. 7 was not so made by following the procedures as mandated in the guidelines as notified vide Notification, dated 27.06.2016, *read with* the subsequent Notification, dated 27.10.2021.

21. This now brings this Court to examine the contention of the petitioners

with regard to the nomination made in respect of Respondent No. 8. The Respondent No. 8 was nominated in terms of the guidelines as contained in the Notification, dated 27.06.2016, by the school authorities and approved by the Inspector of Schools as well as accepted by the Deputy Commissioner concerned for the post of President of the School Management & Development Committee(SMDC) of Markula High School. However, while effecting the nomination, he was so nominated as the Vice-President of the School Management & Development Committee(SMDC) of the said school basing on the approval as granted by the Guardian Minister in this connection.

22. The affidavit of the Deputy Commissioner, Goalpara, also categorically brings on record the fact that the Deputy Commissioner had also not forwarded the name of the Respondent No. 8 for his nomination as the Vice-President of the School Management & Development Committee(SMDC) of Markula High School.

23. In view of the conclusions as reached hereinabove with regard to the nominations as made in respect of Respondents No. 7 and 8 for the posts of President and Vice-President of the School Management & Development Committee(SMDC) of Markula High School and the same having been held to be not so effected following the procedure as mandated in the guidelines as notified vide the Notification, dated 27.06.2016, *read with* the subsequent Notification, dated 27.10.2021; the nomination as made in respect of the Respondents No. 7 and 8 stands interfered with. Accordingly, the Communication, dated 16.10.2022, issued by the Inspector of Schools, Goalpara, in this connection, is hereby set aside and quashed.

24. The petitioner having assailed the nomination of the Respondent No. 7, on the ground, amongst others, that the Respondent No. 7 had a career in politics; the Respondent No. 7 having also brought on record materials to demonstrate that the petitioner No. 1 also had a similar career in politics; this Court refrains from issuing any further direction towards taking the recommendation as made in respect of the petitioner No. 1 for nominating him as the President of the School Management & Development Committee(SMDC) of Markula High School.

25. 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 Markula High 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 Markula High 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.

26. 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.

27. 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.

28. Pending constitution of such School Management & Development Committee(SMDC) and nomination of persons as President and Vice-President thereof; the Director, Secondary Education Department, Assam, shall require the Inspector of Schools, Goalpara, to function as the President of the School Management & Development Committee(SMDC) of Markula High School and discharge all responsibilities as attached to the said post.

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

JUDGE

Comparing Assistant