GAHC010079792020

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

Case No. : WP(C)/2350/2020

DR. LOKMAN ALI
S/O MD. SAYED ALI VILL- GHOGA, P.O. LAWTOLA P.S. MUKALMUA DIST. NALBARI, ASSAM.

VERSUS

THE STATE OF ASSAM AND 10 ORS
TO BE REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM, EDUCATION SECONDARY DEPARTMENT, DISPUR, GUWAHATI-06.

2:THE DIRECTOR
HIGHER EDUCATION ASSAM
KAHILIPARA
GUWAHATI-19

3:THE GOVERNING BODY OF BARKHETRY COLLEGE
TO BE REP .BY ITS CHAIRMAN SK
MUBARAK HUSSAIN
S/O ANADAR ALI
VILL. AND P.O. MUKALMUWA
DIST. NAKBARI
ASSAM

4:PHONIDHAR DEKA
RTD. PROFESSOR
GUWAHATI UNIVERSITY
UNIVERSITY NOMINEE MEMBER
C/O PRESIDENT GOVERNING BODY BARKHETRI COLLEGE
MUKALMUWA
DIST. NALBARI
ASSAM

5:MONAJ KR. MAHANTA
PRINCIPAL BAJALI COLLEGE NOW WORKING AT PRINCIPAL
PRAGJYOTISH COLLEGE
BHARALUMUKH
DIST. KAMRUP(M)
ASSAM
PIN-UNIVERSITY NOMINEE

6:ABDUR SATTAR CHOUDHURY
GURDIAN MEMBER
C/O PRESIDENT GOVERNING BODY BARKHETRI COLLEGE
MUKALMUWA
DIST. NALBARI
ASSAM

7:RAJAN DEKA
GAURDIAN MEMBER
C/O PRESIDENT GOVERNING BODY BARKHETRI COLLEGE
MUKALMUWA
DIST. NALBARI
ASSAM

8:SALYA DEKA
WOMEN GUARDIAN MEMBER
C/O PRESIDENT GOVERNING BODY BARKHETRI COLLEGE
MUKALMUWA
DIST. NALBARI
ASSAM

9:ARFAQUR RAHMAN
TEACHER REPRESENTATIVE MEMBER
C/O PRESIDENT GOVERNING BODY BARKHETRI COLLEGE
MUKALMUWA
DIST. NALBARI
ASSAM

10:JULFIKAR ALI
TEACHER REPRESENTATIVE MEMBER
C/O PRESIDENT GOVERNING BODY BARKHETRI COLLEGE
MUKALMUWA
DIST. NALBARI
ASSAM

11:ABDUL KASIM

NON TEACHING MEMBER
C/O PRESIDENT GOVERNING BODY BARKHETRI COLLEGE
MUKALMUWA
DIST. NALBARI
ASSA

Advocate for the Petitioner : MR A R BHUYAN

Advocate for the Respondent : SC, HIGHER EDU

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

ORDER

Date : 04-12-2020

Heard Mr. K.N. Choudhury, learned senior counsel for the petitioner. Also heard Mr. K. Gogoi, learned counsel for the Higher Education Department of the Govt. of Assam.

2. Without going into the details of the facts involved in the petition, we take note of that the governing body of Barkhetri College was constituted by the order dated 15.06.2016 of the Director of Higher Education, Assam with Sheikh Mobarak Hussain as the President of the governing body.

3. The constitution of the governing body with Sheikh Mobarak Hussain as the president was a subject matter in WP(C) 7647/2019 which was given a final consideration by the order dated 04.10.2019, wherein, in paragraphs 8 and 9 it was provided as extracted below:-

"*8)This Court is of view that this is a matter which can be looked into by the Director of Higher Education as the Governing Body should be properly constituted as per norms and if the same has not been done, the Director can certainly intervene and pass appropriate order.*

9)Accordingly, the present petition is disposed of with the direction to the respondent authorities more particularly, the Director of Higher Education to look into the matter and take appropriate action, so that the Governing Body of the College is properly constituted, for which the petitioner would be at liberty to submit a detailed representation to the Director highlighting the problems along with the copy of the writ petition and certified copy of this order."

4. The purport of the order dated 04.10.2019 is that the Director of Higher Education, Assam will look into the aspect whether the governing body constituted by the order dated 15.06.2016 confirms to the Rule 3 of the Assam Non-Government College Management Rule 2001 as amended in 2009. The order dated 16.05.2020 which is stated to be a speaking order has been passed by the Director of Higher Education, Assam, a reading of which goes to show that the order was passed pursuant to the

order dated 04.10.2019 in WP(C) 7647/2019. We have gone through the order of the Director and the only reason given there is that the governing body with Sheikh Mobarak Hussain as the President was appointed on 15.06.2016 and the term would expire on 14.06.2021 and therefore, the committee concern will continue up to 14.06.2021.

5. There is not a single sentence from where it can be discerned that the Director had examined the constitution of the governing body as to whether it is in conformity with the Rules as required in the order dated 04.10.2019. We are of the prima facie view that without even issuing notice, the order dated 16.05.2020 had not met the requirements of paragraphs 8 and 9 of the said order.

6. Mr. K. Gogoi, learned counsel for the Higher Education Department also could not point out any sentence from the order dated 16.05.2020 that the examination as required in the order dated 04.10.2019 in WP(C) 7647/2019 has been met.

7. In view of the aforesaid, the order dated 16.05.2020 stands interfered. The matter is remanded back to the Director for passing appropriate orders in conformity with paragraphs 8 and 9 of the order dated 04.10.2019 in WP(C) 7647/2019.

The petition stands disposed of in the above terms.

JUDGE

Comparing Assistant