

GAHC010166422023



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

Case No. : WP(C)/397/2023

MONIR UDDIN AND 2 ORS

S/O LT. MONSER ALI KHANDAKAR VILL. BHIMKHOJ P.O. KHALISABHITA
P.S LAKHIPUR DIST. GAOLPARA ASSAM PIN-783330

2: ABEZUR RAHMAN

S/O LT. HABEJ UDDIN VILL. BHIMKHOJ P.O. KHALISABHITA P.S LAKHIPUR
DIST. GAOLPARA ASSAM PIN-783330

3: ABDUL KADER

S/O LT. MUSKAR ALI VILL. RAKHALKILLA P.O. KHALISABHITA P.S
LAKHIPUR DIST. GAOLPARA ASSAM PIN-783330
VERSUS

THE STATE OF ASSAM AND 5 ORS

REP. BY THE SECRETARY SCHOOL EDUCATION TO THE GOVT. OF ASSAM
DISPUR GHY-6

2: THE DIRECTOR OF SECONDARY EDUCATION
ASSAM

KAHILIPARA GUWAHATI-19

3: THE DEPUTY COMMISSIONER
GOALPARA

P.O. AND DIST. GOALPARA ASSAM PIN-783101

4: THE INSPECTOR OF SCHOOLS
GDC

GOALPARA P.O. AND DIST. GOLAPARA ASSAM PIN-783101

5: THE PRINCIPAL OF KHALISABHITA H.S. SCHOOL

P.O. SIMLABARI P.S LAKHIPUR DIST. GOALPARA ASSAM PIN-783330

6: SAIFUL ISLAM

S/O IDRIS ALI VILL. CHARALJHAR P.O. KHALISABHITA P.S LAKHIPUR DIST.
GOALPARA ASSAM PIN-783330

Advocate for : MR R ISLAM

Advocate for : GA

ASSAM appearing for THE STATE OF ASSAM AND 5 ORS

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

JUDGMENT & ORDER (Oral)

Date : 05-01-2024

Heard Mr. R. Islam, learned counsel for the petitioner. Also heard Mr. U. Sharma, Standing Counsel, Education (Secondary) Department for respondent Nos. 1, & 2 and Ms. D. Das Barman, learned Government Advocate for respondent no. 3 as well as Mr. N. Sarma, learned counsel for the respondent no. 6.

2. The petitioners, who are the guardians/parents of the students studying in Khalisabhita H.S. School have instituted the present proceeding making a challenge to the appointment of the respondent no. 6 as the President of the School Management and Development Committee (SMDC) of the said school.

3. As projected in the writ petition, the Inspector of the schools, GDC, Goalpara vide a letter dated 28.09.2021, had required all Heads of Institution under his jurisdiction including the respondent no. 5 herein to submit a panel of two names each for the posts of President and Vice-President of the SMDC of the school in accordance with the guidelines contained in the government notification dated 24.06.2016. In pursuance to the said communication dated 28.09.2021, the respondent no. 5 in consultation with

the staffs, parents, guardians and local people of the area prepared a panel list of two persons, namely, 1) Ashraful Islam Mondal and 2) Anowar Hussain for the post of President of SMDC of the said school and the same was forwarded to the jurisdictional Inspector of Schools for necessary further action.

4. It is the case of the petitioners that ignoring the panel list as prepared in terms of the guidelines contained in the government notification dated 24.06.2016, the Inspector of Schools, Goalpara vide his communication dated 16.12.2022, approved the name of the respondent no. 6 as the President of the SMDC of the said school and the respondent no. 5 was directed to convene a general meeting for constitution of the SMDC. It is this communication dated 16.12.2022, that is presently under challenge in the present proceeding.

5. Mr. R. Islam, learned counsel for the petitioners by drawing the attention of the Court to the guidelines for constitution of the SMDC as contained in the government notification dated 24.06.2016, more particularly, the qualification prescribed therein for the post of President has contended that the candidate to be approved for the post of President must be a local educated reputed citizen having no political career. It is contended by referring to Annexure-5 of the writ petition that the respondent no. 6 is having an active political career and is a member of the Bhartiya Janata Yuva Morcha, Goalpara District, and was nominated as its College Outreach Co-In-charge . It is submitted that the respondent no. 6 being a person having a political career, he is not eligible for being considered for the post of

President in the SMDC of the said school. It is further submitted that the respondent no. 6 is a young person, aged about 32 years and actively involved in politics and as such, he does not fulfill the eligibility criteria as mandated to be possessed by a person to be appointed as President in the SMDC of the said school. Further it was submitted that the name of the respondent no. 6 was not nominated by the school authorities.

6. Mr. R. Islam, learned counsel for the petitioner submitted that in pursuance to the approval of the name of the respondent no. 6 as the President of the SMDC of the said school and one another as its Vice-President, the full-fledged committee of the said SMDC is yet to be constituted inasmuch as the meeting requisite to be convened for such constitution has not been convened till the date of filing of the writ petition. As such, basing on the said contentions it is prayed that the approval of the name of the respondent no. 6 as the President of the SMDC of the school in question, vide communication dated 16.12.2022, be interfered with by this Court.

7. Mr. N. Sharma, learned counsel, by referring to the pleadings as available in the matter in the I.A.(C)/2165/2023, filed by the respondent no. 6 contends that the government notification dated 24.06.2016 was modified vide a notification dated 27.10.2021 and in terms of the notification dated 27.10.2021, it is the Deputy Commissioner of the District, who is empowered to select and appoint the President and Vice-President of the SMDC of an educational institution of the concerned district with the approval of the guardian minister.

8. It is the contention of Mr. Sharma, learned counsel that in terms of the notification dated 27.10.2021, there is no requirement of preparation of any panel by the school authorities and as such, the contention of the petitioners that the respondent no. 6 could not have been selected in view of the fact that his name did not figure in the panel prepared by the school authorities is clearly unsustainable.

9. Mr. Sharma, learned counsel with regard to the contention of the petitioners that the respondent no. 6 has an active political career has contended that before his approval as the President of the SMDC of the school in question, the respondent no. 6 had on 25.05.2022 submitted his resignation from the post of College Outreach Co-In-charge of Bharatiya Yuva Morcha, Goalpara District, and as such, he cannot be said to be a person having an active political career. The learned counsel further contends that the approval as granted in his case for appointment as the President of the SMDC of the school in question, having been so done in terms of the government notification dated 27.10.2021, which is contended to be the one holding the field, it is stated that such approval does not call for any interference from this Court.

10. I have considered the submissions so advanced by the learned counsels for the parties and also the materials available on record.

11. The manner and method of constitution of the SMDC of a Secondary School is prescribed under the notification dated 24.06.2016. In terms of the

said notification dated 24.06.2016, 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 24.06.2016, it is mandated that the Inspector of Schools, after consultation with the Principal/Headmaster and with local people of the area will forward two names to the Director, 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, 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 24.06.2016, 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. 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 24.06.2016.

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 notification dated 24.06.2016 and 05.04.2017. On a conjoint reading of the notifications dated 24.06.2016 and

27.10.2021, it is seen that in the notification dated 24.06.2016, 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 the same in the Deputy Commissioner of the District concerned with the requirement of having the approval of the guardian minister of the district concerned to such appointments. Baring the power of appointment as modified vide the notification dated 27.10.2021, the other provisions of notification dated 24.06.2016 continues to hold the field as before.

14. On a pointed query made by this Court to Mr. Sharma, learned counsel as to whether the notification dated 27.10.2021, has the effect of eclipsing the guidelines as contained in the notification dated 24.06.2016 and it can be construed that it is only the notification dated 27.10.2021 that is holding the field insofar as it concerns appointment of President and Vice-President of a SMDC of a school, Mr. Sharma has fairly submitted that in view of the language of the notification dated 27.10.2021, both the notifications hold the field and it is only in respect of the authority and power to select and appoint President and Vice-President of a SMDC of a school that a modification was effected of in the notification dated 24.06.2016 vide the notification dated 27.10.2021.

15. Having noticed the purport of the notification dated 24.06.2016 as well as the notification dated 27.10.2021, the issues arising in the present writ petition is being considered.

16. It is seen that the respondent no. 6 a young man of 32 years of age was approved for appointment as the President of the SMDC of the school in question on his nomination by the Deputy Commissioner and approval by the guardian minister of the district of Goalpara. The name of the respondent no. 6 was not forwarded by the school authorities in pursuance to the communication dated 28.09.2021.

17. On perusal of the notification dated 24.06.2016, 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 nominating 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 eligible criteria as spelled out in the notification dated 24.06.2016. The provisions of the guidelines as contained in the notification dated 24.06.2016, 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 years.

18. On the conjoint reading of the said two criteria as mandated in the guidelines as contained in the notification dated 24.06.2016, 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. The respondent no. 6 as evident from the materials available on record was an active participant in political activity and had a political career. The said position is also admitted by the respondent no. 6 in his pleadings available in the I.A.(C)2165/2023, wherein, he contends that he was a member of the Bharatiya Janata Yuva Morcha, but he had resigned from the said post on 25.05.2022.

19. As has been noted herein above, the process for constituting of the SMDC of the school in question was initiated on 28.09.2021, by the Inspector of Schools, Goalpara and the panel as required to be prepared by the school authorities in terms of the guidelines as contained in the notification dated 24.06.2016, was so prepared and forwarded on 30.09.2021. As such, on the date when the process towards appointment of the President and Vice-President of the SMDC of the school in question was initiated and the steps therein were being processed, the respondent no. 6 had an active political career and as such, in view of the specific eligibility criteria as mandated to be possessed by a person for being considered as appointment as President of the SMDC for the school in question as contained in the guidelines of the notification dated 24.06.2016, the respondent no. 6 did not, admittedly, fulfill the same. As such, he could not have been considered for appointment as a President of the SMDC of the school in question.

20. The subsequent resignation of the respondent no. 6 contended to

have been effected by him on 25.05.2022, is of no consequence inasmuch as the said resignation was so effected after the game has started. It is a settled law that once a game has started the rules of the game cannot be changed midway. In view of the said position, it is clear that the respondent no. 6 does not fulfill the eligibility criteria as mandated in the guidelines as contained in the notification dated 24.06.2016 and as such, he could not have been considered for appointment as the President of the SMDC of the school in question. Further, the guidelines as contained in the notification dated 24.06.2016, requires the preparation of a panel by the Inspector of the Schools after consultation with the Principal/Headmaster and local people and these provisions having not been modified by the subsequent notification dated 27.10.2021, the name of the respondent no. 6 having not been empaneled in pursuance to the process as required under the notification dated 24.06.2016, the Deputy Commissioner could not have selected the name of the respondent no. 6 for appointment as President of the SMDC in the school in question. The approval of the guardian minister to the selection of appointment of the respondent no. 6 for the post of President of the SMDC of the school in question is of no consequence inasmuch as the selection made in his favor by the Deputy Commissioner being in violation of the procedure as mandated in the guidelines contained in the notification dated 24.06.2016, the same is void-ab-initio.

21. Accordingly, the respondent no. 6 under any circumstances could not have been appointed as the President of the SMDC in the school in question. It is held that such appointment of the respondent no. 6 is in clear violation of the guidelines as contained in the notification dated 24.06.2016 and

accordingly, the same cannot be sustained.

22. In view of the conclusions reached herein above, the appointment of the respondent no. 6 as President of the SDMC of the school in question as effected vide the communication dated 16.12.2022, stands set aside and quashed.

23. The respondent authorities are now directed to process the names as forwarded by the school authorities vide the panel dated 30.09.2021, and on consideration of the same in terms of the guidelines as contained in the notification dated 24.06.2016, read with notification dated 27.10.2021, select the President of the SMDC of the school in question.

24. On such consideration being made from the panel as prepared by the school authorities, the Deputy Commissioner, Goalpara, shall place the same before the guardian minister of the district for his approval and on such approval being granted, notify the name of the person so selected from the panel and process and direct for his appointment as the President of the SMDC of the school in question.

25. At this stage, it is to be noted that vide the communication dated 16.12.2022, one Ashraful Islam Mondal was nominated as the Vice-President of the SMDC of the said school. The petitioners, having not arrayed said Ashraful Islam Mondal in the present proceeding nor, assailed his such appointment, this Court expresses no opinion of appointment of Ashraful Islam Mondal as the Vice-President of the SMDC of the said school.

26. Further, the appointment of the respondent no. 6 having been suspended by this Court vide order dated 27.01.2023 and the same now having been interfered with, the respondent no. 6 shall not be permitted to function as the President of the SMDC in the interregnum.

27. In the event it is so necessitated, the Inspector of Schools, Goalpara, shall hold the charge of the post of President, SMDC Khalisabhita HS School and discharge the functions attached to the said post, till the appointment of the President of the SMDC of the said school is effected in terms of the directions passed hereinabove vide this order.

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

JUDGE

Comparing Assistant