

GAHC010057992024



2024:GAU-AS:12885

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

Case No. : WP(C)/1589/2024

NAZRUL HOQUE
S/O- LATE ARFAN ALI, R/O- VILLAGE BHOLAR KHASH,
P.O- CHOTOGUMA,
P.S- GOLAKGANJ, DIST- DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE SECRETARY TO THE GOVERNMENT OF ASSAM, SCHOOL
EDUCATION DEPARTMENT
DISPUR, GUWAHATI-6.

2:THE DIRECTOR OF ELEMENTARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI-19.

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
DHUBRI

P.O
P.S AND DIST- DHUBRI
ASSAM
PIN-783301

4:THE BLOCK ELEMENTARY EDUCATION OFFICER
AGOMONI
DIST- DHUBRI
ASSAM
PIN-783334

5:KAGIMYAS MINUARA BEGUM
W/O- RAHIM MONDOL

R/O- VILLAGE- KAIMMATI
P.O- CHOTOGUMA

P.S- GOLOKGANJ
DIST- DHUBRI
ASSAM
PIN-78333

Advocate for the Petitioner : MR. R ISLAM, MR G U AHMED

Advocate for the Respondent : SC, ELEM. EDU,

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

ORDER

Date : 18.12.2024

Heard Mr. R. Islam, learned counsel for the petitioner and Mr. A. Phukan, learned Standing Counsel for the respondent Nos. 1, 2 & 3.

2. In this petition, under Article 226 of the Constitution of India, the petitioner has put to challenge the correctness or otherwise of the Order, under Memo No. EED-88/pt/SMC/2019-20/9759-65, dated 04.03.2024.

3. It is to be noted here that vide Order dated 04.03.2024, the District Elementary Education Officer, Dhubri (respondent No. 3) had removed the petitioner from the post of President of School Management Committee (herein after SMC) of Kaimmati M.E. School.

4. The grievance of the petitioner, being sought to be addressed in this writ petition, is that vide Memo No. EED-88/Pt/SMC/2023-24/7619, dated 12.12.2023, the respondent No. 3 had approved the resolution passed in the General Meeting, dated 06.12.2023, of the parents/guardians of students and teachers and also approved the appointment of the petitioner as Vice President of the SMC of Kaimmati M.E. School. Subsequent thereto, on a complaint received by

the respondent No. 3 on 26.12.2023, regarding formation of SMC of Kaimmati M.E. School, a hearing was called for at the chamber of the respondent No. 3 and on the date of hearing, 10 numbers of member of the SMC of Kaimmati M.E. School, including the present petitioner and the Headmaster of Kaimmati M.E. School and the respondent No. 5 were present.

4.1. In the said hearing, out of 10 members, 8 members supported the name of the respondent No. 5 as the new President of the SMC of Kaimmati M.E. School and as per decision taken in the said hearing, the name of the respondent No. 5 was approved as President and the name of the petitioner was approved as Vice President of the SMC of Kaimmati M.E. School. Accordingly, the earlier Memo No. EED-88/Pt/SMC/2023-24/7619, dated 12.12.2023, has been superseded and the SMC was constituted by the present members whose names were suggested by the Headmaster of the Kaimmati M.E. School and accordingly, the respondent No. 3, vide Memo No. EED-88/pt/SMC/2019-20/9759-65, dated 04.03.2024, has approved the said proposal.

5. Being aggrieved, the petitioner has approached this Court by filing the present petition on the ground that the new committee was approved, vide order dated 04.03.2024, illegally and arbitrarily and consequently, the petitioner was removed from the post of President of SMC of Kaimmati M.E. School and appointed respondent No. 5 as the new President of SMC of Kaimmati M.E. School, in violation of the provision of Rule 13(3)(v) and 13(5)(ii) of the Assam Right to Children to Free and Compulsory Education Rules, 2011 as well as the Government Guidelines, issued regarding constitution of SMC of the schools, in time to time.

6. The respondent No. 2, the Director Elementary Education Officer, has filed affidavit-in-opposition denying the assertions made by the petitioner in this writ petition. In the said affidavit, the stand taken by the respondent No. 2 is that

as per resolution dated 16.12.2023, 12 numbers of parents/guardians were selected for the members of SMC of Kaimmati M.E. School, wherein the name of the petitioner was selected as President and the name of the respondent No. 5 was selected as Vice President for SMC of Kaimmati M.E. School and as the petitioner has higher qualification than the respondent No. 5, so his name was approved by the respondent No. 3, not because of selection of the parents/guardians present in the meeting.

6.1. It was also stated that on 26.12.2023, a complaint was received by the respondent No. 3, regarding formation of SMC and therefore, a hearing was called for on 16.02.2024, at the office chamber of the respondent No. 3. Wherein, 10 members of the SMC of Kaimmati M.E. School were present and out of 10 members, 8 members supported the name of the respondent No. 5 as the new President of the SMC of Kaimmati M.E. School and as per decision dated 16.02.2024, the name of the respondent No. 5 was approved as new President and the name of the petitioner was approved as Vice President of the SMC of Kaimmati M.E. School and the earlier order dated 12.12.2023, was superseded accordingly. Thereafter, vide impugned order dated 04.03.2024, the proposal for reconstitution of the SMC of Kaimmati M.E. School, forwarded by the Headmaster cum Member Secretary of the SMC of Kaimmati M.E. School, was approved.

6.2. It is also stated that there is no violation of Rule 13(3)(v) and 13(5)(ii) of the Assam Right to Children to Free and Compulsory Education Rules, 2011 and the Government Guidelines issued regarding constitution of SMC of the schools in time to time.

7. It is to be noted here that though extra copy of the writ petition and the notice was served upon the respondent No. 3, the District Elementary Education Officer, Dhubri, by Dasti mode, yet, he/she has not filed any affidavit-in-opposition.

8. Mr. Islam, learned counsel for the petitioner reiterate the facts mentioned in the writ petition and submits that the President of an SMC can be removed in accordance with the Rule 13(5)(ii) of the Assam Right to Children to Free and Compulsory Education Rules, 2011 and that the said Rule reads as under:-

"13(5) Removal of President/Members of SMC and filling up of vacancies:-

- (ii) A person shall not be qualified to be President, Vice President or Member of the SMC and can be removed by the SMC through a resolution signed by at-least two-third (2/3) Members present in the meeting of the committee which should not be less than or equal to fifty percent (50%) of the total members of the committee or by the District Elementary Education Officer after satisfying himself/herself of the facts through an enquiry if:-
- (a) he/she is convicted by the court of law for offences involving moral turpitude or any offence under Sections 302/ 363/ 366/ 376/ 395/ 409/ 465/ 468/ 477(A)/ 493/ 494 of the I.P.C;
 - (b) he/she ceases to be a citizen of India;
 - (c) he/she ceases to be a resident of the village/ward in which the school falls or ceases to have his/her child in the school (for the parent members only);
 - (d) he/she declared insolvent or unsound mind;
 - (e) he/she is found guilty of misconduct or negligence of duty; and
 - (f) he/she fails to attend three consecutive meetings of the committee.”

8.1. Mr. Islam, further submits that in the case in hand, none of the

aforementioned conditions shown to have been existed against the petitioner, so as to remove him from the post of the President of the SMC by the respondent No. 3. Mr. Islam, further submits that as per the said Rule, a President/Vice-President of an SMC can be removed by the SMC through a resolution signed by at-least 2/3rd members present in the meeting of the committee, which should not be less than or equal to 50% of the total members of the committee and that no such resolution was adopted by the SMC of Kaimmati M.E. School and as such, the impugned order dated 04.03.2024, is unsustainable. Therefore, Mr. Islam has contended to allow the petition by setting aside the impugned Memo No. EED-88/pt/SMC/2019-20/9759-65, dated 04.03.2024.

9. On the other hand, Mr. Phukan, learned Standing Counsel for the respondent Nos. 1, 2 & 3 submits that the proposal of removal of the present petitioner from the post of the President of the SMC of Kaimmati M.E. School was approved by the respondent No. 3, for having higher qualification than the respondent No. 5 and not because of selection of name of respondent No. 5 by the members of the committee. Mr. Phukan, further submits that after constitution of the said committee by the resolution dated 12.12.2023, a complaint was received by the respondent No. 3 from the members of the committee. Upon which, on 16.02.2024, the respondent No. 3 had called for a hearing in the office chamber and in the said hearing, 10 members of the SMC of Kaimmati M.E. School were present, including the petitioner and the respondent No. 5 and out of 10 members, 8 members had supported the name of the respondent No. 5 as the new President of the SMC of Kaimmati M.E. School. Thereafter, vide order dated 04.03.2024, the respondent No. 5 was approved as new President and the petitioner was approved as Vice President and that there is no illegality or arbitrariness in the impugned order. Therefore, Mr. Phukan has contended to dismiss the petition.

10. Having heard the submissions of learned counsel for both the parties, I

have carefully gone through the petition as well as the documents placed on record and also perused the impugned Memo No. EED-88/pt/SMC/2019-20/9759-65, dated 04.03.2024, and Memo No. EED-88/Pt/SMC/2023-24/7619, dated 12.12.2023.

11. It is to be noted here that there is no dispute about the facts discussed herein above and also about the impugned orders dated 04.03.2024 and the order dated 12.12.2023, and also about the factum of receiving of complaint by the respondent No. 3 and thereafter, holding a meeting on 16.02.2024, by the respondent No. 3, wherein 10 members of the SMC of Kaimmati M.E. School were present, including the petitioner and the respondent No. 5 and also about the factum of supporting the name of the respondent No. 5, as the new President of the SMC of Kaimmati M.E. School by the 8 members, out of 10 members, who were present in the meeting.

12. Now let it be seen how a President can be removed from the post of the President of SMC. In this regard Rule 13(5)(ii) of the Assam Right to Children to Free and Compulsory Education Rules, 2011 is relevant. The said Rule reads as under :-

"13(5) Removal of President/Members of SMC and filling up of vacancies:-

(ii) A person shall not be qualified to be President, Vice President or Member of the SMC and can be removed by the SMC through a resolution signed by at-least two-third (2/3) Members present in the meeting of the committee which should not be less than or equal to fifty percent (50%) of the total members of the committee or by the District Elementary Education Officer after satisfying himself/herself of the facts through an enquiry if:-

- (a) he/she is convicted by the court of law for offences involving moral turpitude or any offence under Sections 302/ 363/ 366/ 376/ 395/ 409/ 465/ 468/ 477(A)/ 493/ 494 of the I.P.C;
- (b) he/she ceases to be a citizen of India;
- (c) he/she ceases to be a resident of the village/ward in which the school falls or ceases to have his/her child in the school (for the parent members only);
- (d) he/she declared insolvent or unsound mind;
- (e) he/she is found guilty of misconduct or negligence of duty; and
- (f) he/she fails to attend three consecutive meetings of the committee.”

13. Admittedly, in the instant case, the respondent No. 3 has exercised the power of removal of the petitioner from the post of the President of the SMC of Kaimmati M.E. School on the basis of the decision taken in the meeting held on 16.02.2024, in the office chamber of the respondent No. 3, wherein 10 members of the SMC of Kaimmati M.E. School were present, including the petitioner and the respondent No. 5 and out of 10 members, 8 members had supported the name of the respondent No. 5 as the new President of the SMC of Kaimmati M.E. School.

14. The complaint so received by the respondent No. 3 is enclosed with the affidavit-in-opposition filed by the respondent No. 2, as Annexure – ‘A’; meeting notice for hearing dated 16.02.2024, as Annexure – ‘B’; attendance sheet of the members of the SMC of Kaimmati M.E. School, who had attended the meeting in the office chamber of the respondent No. 3 on 16.02.2024, as Annexure – ‘C’; and impugned order dated 04.03.2024, as Annexure – ‘E’.

15. That perusal of the Annexure – ‘C’ reveals that the meeting was held in the office chamber of the respondent No. 3 and in the said meeting, 10 members of the SMC of Kaimmati M.E. School, including the present petitioner and the

respondent No. 5, and their signatures appeared therein and there is an endorsement, below the signatures of the members of the committee, that out of 10 members, 8 members had supported the name of the respondent No. 5 as the new President of the SMC of Kaimmati M.E. School.

16. Notably, no resolution is enclosed with the affidavit-in-opposition filed by the respondent No. 3, which was adopted in the said meeting dated 16.02.2024. It is also to be noted here that though there is an endorsement in the attendance sheet of the members of the SMC of Kaimmati M.E. School, who were present in the said meeting, this Court is unable to read the same as resolution, as contemplated under Rule 13(5)(ii) of the Assam Right to Children to Free and Compulsory Education Rules, 2011.

17. As no resolution seems to have been adopted on the meeting held on 16.02.2024, in the office chamber of the respondent No. 3 and as Annexure – ‘C’ cannot be read as a resolution as the same is only an attendance sheet, this Court is of the view that the procedure prescribed for removal of the President, has not been followed in accordance with the provision of Rule 13(5)(ii) of the Assam Right to Children to Free and Compulsory Education Rules, 2011 and therefore, the impugned order dated 04.03.2024, to the considered opinion of this Court is illegal and arbitrary.

18. It is well settled that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden. Reference in this context can be made to a decision of Privy Council, in the case of **Nazir Ahmad vs King Emperor**, reported in **AIR 1936 PC 253**, which is being followed in a catena of decisions by the Hon'ble Supreme Court and also by various High Courts of the country.

19. Admittedly, also the respondent No. 3 has not exercised the power under

the provision of Rule 13(5)(ii) of the Assam Right to Children to Free and Compulsory Education Rules, 2011 after satisfying himself/herself the conditions mentioned therein from Clauses (a) – (f).

20. In the result, I find sufficient merit in this petition and accordingly, the same stands **allowed**. The Memo No. EED-88/pt/SMC/2019-20/9759-65, dated 04.03.2024, stands set aside and quashed. Consequently, the earlier Memo No. EED-88/Pt/SMC/2023-24/7619, dated 12.12.2023, wherein the present petitioner was approved as the President of the SMC of Kaimmati M.E. School stands restored.

21. In terms of above, this writ petition stands disposed of. The parties have to bear their own cost.

JUDGE

Comparing Assistant