

GAHC010014852024



2024:GAU-AS:13131

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

Case No. : WP(C)/377/2024

SAMSUDDIN KARI
S/O LATE FAZAR ALI, VILL- MOHMARI PATHER, P.O.-TENGAGURI, P.S.-
LAHARIGHAT, DIST- MORIGAON, ASSAM, PIN-782127

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY ITS COMMISSIONER AND SECRETARY, ELEMENTARY
EDUCATION DEPARTMENT, GOVERNMENT OF ASSAM, DISPUR,
GUWAHATI

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19

3:DEPUTY COMMISSIONER
MORIGAON
ASSAM

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
MORIGAON
DIST-MORIGAON
ASSAM

5:BLOCK ELEMENTARY EDUCATION OFFICER
LAHARIGHAT EDUCATION BLOCK
ASSAM

6:HEAD MASTER
MAHMARI PRE SENIOR MADRASSA
VILL- AUTOLABORI

MOHMARI PATHER
P.O.-TENGAGURI
P.S.-LAHARIGHAT
DIST-MORIGAON

7:JAMAL
S/O BINESH
VILL-HOLLOW KANDHA
P.O.-HOLLOW KANDHA
P.S.-BHURAGAON
DIST-MORIGAON
PIN-782121

8:ATABUR RAHMAN
CRCC
AUTOLABORI CLUSTER
S/O MONSUR ALI
VILL- AUTALABORI
P.O.-CHETUAIKHAITY
DIST- MORIGAON
ASSAM
PIN-78212

Advocate for the Petitioner : MR. R SHARMA, MISS R A CHOUDHURY,MR E AHMED

Advocate for the Respondent : SC, ELEM. EDU, GA, ASSAM

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

13/09/2024

Heard Mr. R Sharma, learned Senior counsel assisted by Mr. E Ahmed, learned counsel for the petitioner and Mr. P K Bora, learned Standing counsel, Elementary Education Department for the respondent Nos. 1, 2, 4 & 5. Also heard Mr. G Pegu, learned Government Advocate, Assam for the respondent No. 3.

2. It is submitted by the petitioner that though in the general meeting held on 28.10.2023, his name was proposed for the post of President of the School Managing Committee (SMC) of Mohmari Pre-Senior Madrassa in the Laharighat Education Block of District-Morigaon that was

proposed by two persons, namely, Nur Jamal and Nur Nehar and seconded by Faizul Islam, who are the guardians of the students studying in the said Mohmari Pre-Senior Madrassa, but the respondent authorities, more particularly, the District Elementary Education Officer (DEEO), Morigaon did not give its approval for constitution of the SMC headed by the petitioner as President of said Mohmari Pre-Senior Madrassa. Hence, this writ petition.

3. The Assam Right of Children to Free and Compulsory Education Rules, 2011 has been formulated under Section 38 of the Right of Children to Free and Compulsory Education Act, 2009, as such, said 2011 Rules have statutory force.
4. Rule 13 of the said 2011 Rules provides for "School Management Committee".
5. Rule 13(1) of the said 2011 Rules stipulates the Composition and functions of the School Management Committee for the purposes of Section 21 of the said 2009 Act.
6. Rule 13(2) of the said 2011 Rules provides for "function of the Managing Committee".
7. Rule 13 (3) of the said 2011 Rules stipulates the provisions of selection/election of the President and Members of School Managing Committee.
8. Rule 13 (3) (iii) of the said 2011 Rules provides as follows:

"(iii) Selection of the President, Vice-President and members of SMC shall be made by the parents/guardians of the students of the school among themselves in a meeting specially convened for the purpose by the Head Master of the concerned school as far as possible in a unanimous manner. In case of failure to select the President, Vice President and the members unanimously the procedure of election by casting votes of parents/guardians may be adopted subject to the approval of the observer. The Deputy Inspector of Schools/District Elementary Education Officer/Sub Inspector of Schools be present in the meeting as observer and ensure holding of such election in free and fair manner with participation of maximum member of parents/guardians."

9. Therefore, as per the statutory provision, selection of the President, Vice President and Members of the School Managing Committee of any such school under the said 2009 Act have to be made by the parents / guardians of the students of the school concerned among themselves in a meeting specially convened for the purpose by the Headmaster of the concerned School, as far as possible in an unanimous manner.

10. Mr. Bora, learned Standing counsel, Elementary Education Department placed before the Court a communication of the Director of Elementary Education, Assam, respondent No. 2 dated 12.09.2024, which indicates that as per the report submitted by the District Elementary Education Officer, Morigaon, a proposal from the Block Elementary Education Officer, Laharighat was received by a communication dated 28.11.2023 for obtaining necessary approval from the said DEEO, Morigaon where the name of the respondent No. 7, Jamal was recommended as President of the School Managing Committee (SMC) of said Mohmari Pre-Senior Madrassa.

11. The communication of the DEE, Assam dated 12.09.2024 also indicates that in the meeting held on 28.10.2023, there were 71 nos. of guardian members and local public present in the meeting and the process of giving approval of the SMC of said Mohmari Pre-Senior Madrassa as proposed by the DEEO, Laharighat while underway, the petitioner submitted a complaint before the DEEO, Morigaon.

12. As per the complaint of the petitioner, an enquiry was conducted by the Sub-Inspector of Schools, Laharighat Education Block and in the said enquiry report of the Sub-Inspector of Schools, Laharighat Education Block, it is stated that there were 5 nos. of candidates, who submitted their candidatures and out them 3 nos. of candidates had withdrawn their candidatures.

13. From the remaining 2 nos. of candidates, the candidature of the petitioner was rejected as the proposer of the petitioner had no children studying in said Mohmari Pre-Senior Madrassa. As such, the proposer was not a guardian/parent member so as to select/elect the President of the SMC of the said school, as provided under Rule 13 (3) (iii) of the said 2011 Rules, as per the report of the Sub-Inspector of Schools, Laharighat Education Block. Hence, the case of the petitioner to be the President of the SMC of the said Mohmari Pre-Senior Madrassa under Laharighat Education Block of District-Morigaon as per the meeting held on 28.10.2023 could not be considered by the DEEO, Morigaon in violation of the said Rule 13 (3) (iii) of the said 2011 Rules.

14. Considering the above, this writ petition is disposed of directing the petitioner to file a representation before the District Elementary Education Officer, Morigaon on or before 21.09.2024 stating/giving the details of children of his proposer studying in said Mohmari Pre-Senior

Madrassa under Laharighat Education Block of District-Morigaon.

15. The District Elementary Education Officer, Morigaon after due verification of the records including the signatures of the proposers and seconder proposing the name of the petitioner and verifying the school records of said Mohmari Pre-Senior Madrassa, shall pass a necessary order pertaining to the SMC of said Mohmari Pre-Senior Madrassa as per the general meeting held on 28.10.2023.

16. Till such decision of the DEEO, Morigaon, the said authority shall hold the charge/activities of the School Managing Committee of said Mohmari Pre-Senior Madrassa, as directed by the Court earlier on 24.01.2024.

17. Copy of the communication dated 12.09.2024 of the Director of Elementary Education, Assam placed before the Court by Mr. Bora, learned Standing counsel, Elementary Education Department be kept as a part of the record.

18. With the above observation and direction, this writ petition stands disposed of.

JUDGE

Comparing Assistant