

GAHC010002532024



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

Case No. : WP(C)/53/2024

ZAKIR HUSSAIN SK AND 8 ORS
SON OF LATE GOLBOXO SK,
RESIDENT OF VILLAGE- SALMARA PART-III,
P.O.- BONDIHANA,
IN THE DISTRICT OF DHUBRI, ASSAM.

2: KERAMOT ALI
SON OF LATE MOKTAR HUSSAIN
RESIDENT OF VILLAGE- SALMARA PART-III
P.O.- BONDIHANA
IN THE DISTRICT OF DHUBRI
ASSAM.

3: LOTIP UDDIN
SON OF LATE SAMAD ALI
RESIDENT OF VILLAGE- SALMARA PART-III
P.O.- BONDIHANA
IN THE DISTRICT OF DHUBRI
ASSAM.

4: PARISON NESSA
WIFE OF MAREJ ALI
RESIDENT OF VILLAGE- SALMARA PART-III
P.O.- BONDIHANA
IN THE DISTRICT OF DHUBRI
ASSAM.

5: PHULMOTI BEGUM
WIFE OF NAJEM ALI
RESIDENT OF VILLAGE- SALMARA PART-III
P.O.- BONDIHANA
IN THE DISTRICT OF DHUBRI
ASSAM.

6: AYJUDDIN SK
SON OF LATE KALACHAND SK

RESIDENT OF VILLAGE- SALMARA PART-III

P.O.- BONDIHANA

IN THE DISTRICT OF DHUBRI
ASSAM.

7: ALAHI SK
SON OF LATE EUNAS ALI

RESIDENT OF VILLAGE- BOYJAR ALGA

P.O.- BONDIHANA

IN THE DISTRICT OF DHUBRI
ASSAM.

8: ATLAB HUSSAIN
SON OF LATE GOLBOXO SK

RESIDENT OF VILLAGE- SALMARA PART-III

P.O.- BONDIHANA

IN THE DISTRICT OF DHUBRI
ASSAM.

9: BOKKAR ALI
SON OF MOYDAN ALI

RESIDENT OF VILLAGE- SALMARA PART-III

P.O.- BONDIHANA

IN THE DISTRICT OF DHUBRI
ASSAM

VERSUS

THE STATE OF ASSAM AND 15 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
DEPARTMENT OF SCHOOL EDUCATION,
DISPUR, GUWAHATI- 781006.

2:THE DIRECTOR
ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI- 781019.

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
DHUBRI
P.O. AND P.S.- DHUBRI

IN THE DISTRICT OF DHUBRI

PIN- 783301.

4:THE BLOCK ELEMENTARY EDUCATION OFFICER
BILASIPARA
P.O. AND P.S.- BILASIPARA

IN THE DISTRICT OF DHUBRI
ASSAM

PIN- 783348.

5:THE HEAD MASTER
BONDIHANA M.V. SCHOOL
P.O.- BONDIHANA

IN THE DISTRICT OF DHUBRI
ASSAM

PIN- 783349.

6:ABDUR ROHIM
SON OF SOKKER ALI

RESIDENT OF VILLAGE- SALMARA PART-III

P.O.- BONDIHANA

IN THE DISTRICT OF DHUBRI

PIN- 783349.

7:SHAHIDA KHATUN
WIFE OF SAYED ALI

RESIDENT OF VILLAGE- SALMARA PART-III

P.O.- BONDIHANA

IN THE DISTRICT OF DHUBRI
ASSAM.

8:ABDUL AWAL
SON OF JOYNAL ABEDIN

RESIDENT OF VILLAGE- SALMARA PART-III

P.O.- BONDIHANA

IN THE DISTRICT OF DHUBRI
ASSAM.

9:TARA MIAH
SON OF ROHOM ALI

RESIDENT OF VILLAGE- SALMARA PART-III

P.O.- BONDIHANA

IN THE DISTRICT OF DHUBRI
ASSAM.

10:AHIA KHATUN
WIFE OF HANIF UDDIN

RESIDENT OF VILLAGE- SALMARA PART-III

P.O.- BONDIHANA

IN THE DISTRICT OF DHUBRI
ASSAM.

11:RASHIDA KHATUN
WIFE OF SADDAM HOSEN

RESIDENT OF VILLAGE- SALMARA PART-III

P.O.- BONDIHANA

IN THE DISTRICT OF DHUBRI
ASSAM.

12:SHAZIDA KHATUN
WIFE OF SHAHINUR ISLAM

RESIDENT OF VILLAGE- SALMARA PART-III

P.O.- BONDIHANA

IN THE DISTRICT OF DHUBRI
ASSAM.

13:JOYNAL ABEDIN
SON OF LATE NUR UDDIN

RESIDENT OF VILLAGE- SALMARA PART-III

P.O.- BONDIHANA

IN THE DISTRICT OF DHUBRI
ASSAM.

14:AMIR HAMJA
SON OF LATE NAYED ALI

RESIDENT OF VILLAGE- SALMARA PART-III

P.O.- BONDIHANA

IN THE DISTRICT OF DHUBRI
ASSAM.

15:REHANA KHATUN
WIFE OF KUTUB UDDIN

RESIDENT OF VILLAGE- SALMARA PART-III

P.O.- BONDIHANA

IN THE DISTRICT OF DHUBRI
ASSAM.

16:CHAYNA KHATUN
WIFE OF BODIA JAMAL

RESIDENT OF VILLAGE- SALMARA PART-III

P.O.- BONDIHANA

IN THE DISTRICT OF DHUBRI
ASSAM

Advocate for the Respondent : SC, ELEM. EDU, MR N SARMA(R-7,13,14,15,16),MR. M MONDAL (r-5),K ZAMAN (r-8 to 12),MR. A S CHOUDHURY (r-6,8 to 12),MR. A F N U MOLLAH (r-6,8 to 12)

BEFORE
HON'BLE MR. JUSTICE LANUSUNGKUM JAMIR

25.09.2024

O R D E R

Heard Mr. R. Islam, learned counsel for the petitioners. Also heard Mr. A. Phukan, learned Standing Counsel, Elementary Education Department, Government of Assam, for respondent Nos.1 to 4; Mr. A.F.N.U. Mollah, learned counsel for respondent Nos.6, 8 to 12 and Mr. N. Sharma, learned counsel for respondent Nos.7, 13 to 16.

2. The petitioners, who are the Members of the new School Management Committee (SMC, in short) of Bondihana MV School, Dhubri, which was given approval by the District Elementary Education Officer, Dhubri by the approval letter dated 01.01.2024, is before this Court challenging the constitution of the SMC on the ground that the same has been done in violation of the provisions of *Assam Right of Children to Free and Compulsory Education Rules, 2011* (Rules of 2011, in short) as well as the guidelines issued by the official respondents by the Communication dated 08.09.2023.

3. Mr. R. Islam, learned counsel for the petitioners, submits that Rule 13(3)(iii) of the Rules of 2011 provides that selection of the President, Vice-President and Members of the 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 Headmaster of the concerned School as far as possible in an unanimous manner.

However, in the event, if there is failure to select the President, Vice-President and the Members unanimously, then the procedure of election by casting votes of parents/guardians may be adopted subject to the approval of the observer. He also submits that the guidelines provided in the Communication dated 08.09.2023 provides that only 12 Members shall be from parents/guardians of the students of the School with regard to constitution of the SMC. In the present case in hand, there was no unanimous decision amongst the candidates for selection of 12 Members of the SMC of the said School and, therefore, the next option provided under Section 13(3)(iii) of Rules of 2011 should have been resorted to whereby the Members of the SMC should have been selected by way of casting votes. However, the District Elementary Education Officer, Dhubri, proceeded to select the Members of the SMC and, therefore, the said action of the DEEO, Dhubri being in violation of the provisions of the Rules of 2011 and the guidelines provided by Communication dated 08.09.2023, the same should be set aside and direction be issued to the authorities for re-constitution of a fresh SMC in respect of Bondihana MV School, Dhubri.

4. The respondent No.3, who is the DEEO, Dhubri, has filed counter affidavit. In the said affidavit, at paragraph-4, it is stated that the Headmaster of Bondihana MV School convened a general meeting on 17.10.2023 for formation of SMC of the said School. In the said general meeting, 36 Members were selected for the SMC of the School and the same is not permissible as per the Government guidelines inasmuch as only 12 Members are to be selected for the SMC of a School out of which one person shall be President and another will be Vice-President (one must be female from President/Vice President). It is also stated that in the general meeting dated 17.10.2023, the parents/guardians could not propose/select the President/Vice-President for the SMC of the said School.

5. Mr. Phukan, learned Standing Counsel, Elementary Education Department, Government of Assam, submits that as there were anomalies in the general meeting that was held on 17.10.2023 for constitution of SMC of Bondihana MV School, a direction may be issued to the respondents for having a fresh general meeting for constitution of the new SMC of said Bondihana MV School.

6. Mr. Mollah, learned counsel for the respondents No.6, 8 to 12 as well as Mr. N. Sharma, learned counsel for respondent Nos.7, 13 to 16, have no objections.

7. This Court has perused the minutes of the general meeting held on 17.10.2023 with regard to constitution of a new SMC of the said Bondihana MV School. In the said minutes, it is seen that as many as 36 Members have been nominated by the general meeting.

8. Section 13(1) of the Rules of 2011 provides for composition and functions of the SMC for the purpose of Section 20. Further, Rule 13(1)(iii) of the Rules of 2011 provides the number of Members for constitution of the SMC. Rule 13(3)(iii) of the Rules of 2011 provides the manner in which the selection of the President/Vice-President and Members of the SMC has to be carried out. Therein it is provided that the selection of the President, Vice-President and Members of the SMC shall be made by the parents/guardians of the students of the School amongst themselves in a meeting specially convened for the said purpose by the Headmaster of the concerned School as far as possible in an unanimous manner. In the event, there is failure to select the President/Vice President and Members of the SMC unanimously, then the procedure by election by casting votes by the parents and guardians may be adopted subject to approval of the observer.

9. In the present case, it is seen that there was no unanimous decision for constitution of the Members of the SMC of the said Bondihana MV School. Therefore, when there was no unanimous decision amongst the parents/guardians,

then the next procedure, i.e., election by casting votes of the parents/guardians should have been adopted. This has not been done. When a statute provides for a particular thing to be done in a particular manner, it has to be done in that manner only and not otherwise.

10. Accordingly, the approval given by the DEEO, Dhubri by Communication dated 01.01.2024 approving the constitution of the SMC of Bondihana MV School is set aside and quashed. The Headmaster of Bondihana MV School is accordingly directed to convene a general meeting of the parents/guardians of the said Bondihana MV School for constitution of a new SMC of the said School at the earliest but not later than two weeks from the date of receipt of a copy of this Court's order. In the said general meeting, the parents/guardians shall proceed for selection of the Members of the SMC of the said Bondihana MV School in accordance with Rule 13(3)(iii) of the Rules of 2011 as well as the guidelines provided by Communication dated 08.09.2023.

The constitution of the SMC of Bondihana MV School, Dhubri, shall be completed within one month from the date the Headmaster of the School convenes the general meeting for constitution of the new SMC. Till the new SMC is constituted, the concerned DEEO shall look into the affairs and management of the said Bondihana MV School.

11. With the above observations and directions, this writ petition is disposed of.

JUDGE

Comparing Assistant