



GAHC010200652022

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

Case No. : WP(C)/6459/2022

DR. ANIRVANA DUTTA
ASSTT. PROFESSOR, DEPTT. OF BENGALI, NILAMBAZAR, COLLEGE
(PROVINCIALIZED) P.O. NILAMBAZAR, DIST. KARIMGANJ, ASSAM, PIN-
788722.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, DEPARTMENT OF SECONDARY EDUCATION, DISPUR,
GUWAHATI-781006, ASSAM

2:THE DIRECTOR
SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-781019
ASSAM

3:THE INSPECTOR OF SCHOOLS
KDC
KARIMGANJ
P.O. AND DIST. KARIMGANJ
PIN- 788710
ASSAM

4:THE DEPUTY COMMISSIONER
KARIMGANJ
P.O. AND DIST.- KARIMGANJ
ASSAM
PIN- 788710.

5:THE HEAD MASTER



JAFARGARH EXT'D. HIGHER SECONDARY SCHOOL
P.O. BARAIGRAM
DIST. KARIMGANJ
ASSAM
PIN- 788719.

6:BIKRAMJIT DUTTA
S/O- SRI BENU BHUSAN DUTTA
VILL.- KHATALGOOL
P.O. BARAIGRAM
DIST. KARIMGANJ
ASSAM
PIN- 788723

Advocate for the Petitioner : MR. A R TALUKDAR

Advocate for the Respondent : GA, ASSAM

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the petitioner : Shri AR Talukdar

Advocates for the respondents : Shri P. Saika, GA, Assam
Ms. S. Dasgupta, R - 5 & 6

Date of hearing & judgment : **24.07.2023**

JUDGMENT & ORDER

Heard Shri AR Talukdar, learned counsel for the petitioner. Also heard Shri P. Saika, learned State Counsel whereas Ms. S. Dasgupta, learned counsel has appeared for the respondent nos. 5 and 6.

2. When this matter was taken up by this Court on the last occasion i.e. 23.06.2023, the following order was passed, which is extracted hereinbelow:



“Heard Shri AR Talukdar, learned counsel for the petitioner, who is aggrieved by an order dated 02.09.2022 whereby the respondent no. 6 has been made the President of the School Managing & Development Committee (SMDC) of Jafargarh Extd. Higher Secondary School in the district of Karimganj. It is the case of the petitioner that vide an earlier order dated 04.06.2022, the petitioner was duly elected and appointed as the President of the SMDC of the School whereafter the impugned order has been passed. No reasons have been disclosed as to why the petitioner has been replaced as the tenure in question is five years.

2. Also heard Shri SMT Chistie, learned Standing Counsel, Secondary Education Department as well as Ms. D. Das Barman, learned State Counsel for the State including the Deputy Commissioner. None has appeared for the respondent no. 5 in spite of names being shown in the cause-list.

3. Both the learned State Counsel have submitted that as per the notification dated 27.10.2021 which is presently holding the field of appointment of the President and Vice-President of the SMDC of educational institution, the power of selection is vested with the Deputy Commissioner which required the approval of the Guardian Minister.

4. *Prima facie, the order dated 04.06.2022 would reflect that the approval of the Deputy Commissioner was taken. The question therefore arises as to whether the other formalities were fulfilled before issuance of the order of appointment order dated 04.06.2022 and even the impugned order dated 02.09.2022.*

5. Let the records pertaining to such orders be produced by the learned State Counsel.

6. *On request, list this case on 24.07.2023."*

3. Pursuant to the said order, the records in original have been produced by Shri P.

Saikia, learned State Counsel appearing for the State respondents including the Deputy Commissioner of Karimganj.

4. Shri Talukdar, learned counsel for the petitioner has submitted that vide the initial notification dated 04.06.2022, SMDC of as many as 77 number of schools were constituted and vide the impugned order dated 02.09.2022, the change was brought only to the school of the petitioner in question whereby the petitioner was replaced by the respondent no. 6. Terming the said action to be arbitrary and unreasonable, he submits that there are no cogent reasons for issuing the impugned notification as the earlier notification was issued by following the guidelines contained in the notification dated 24.06.2016 pertaining to the constitution of SMDC. It is further submitted that the petitioner is an educationist and better qualified than the respondent no. 6, who is a businessman.

5. *Per contra*, Shri Saikia, learned State Counsel has submitted that while the petitioner has annexed the notification dated 24.06.2016 by submitting that the same is operative for constitution of SMDC, the factual position is a different one. He submits that presently, a notification dated 27.10.2021 is holding the field whereby the Deputy Commissioner of the concerned district is empowered to select the President and Vice-President of the SMDC of an educational institution of the concerned district with the approval of the Guardian Minister. He submits that the impugned notification dated 02.09.2022 has been issued by following the notification dated 27.10.2021.

6. By referring to the records, the learned State Counsel submits that the same contains the reasons for which impugned notification was issued.

7. Ms. Dasgupta, learned counsel for the respondent nos. 5 and 6 by controverting the submissions made on behalf of the petitioner contends that the present notification dated 02.09.2022 has been issued in accordance with law and by taking into consideration the relevant facts and the circumstances. She submits that the respondent no. 6 has got the requisite qualification to be appointed as the President

of the SMDC and there is no requirement to possess any higher qualification as contended on behalf of the petitioner. She further submits that it is the mandate of the local people and the views of the school authorities which would be material and in this case the respondent no. 6 appointment is backed by both the aforesaid factors which are only the relevant consideration. The learned counsel also endorses the submission of Shri Saikia, learned State Counsel by submitting that the present notification holding the field dated 27.10.2021 has not been challenged.

8. The rival submissions made by learned counsel for the parties have been duly considered and the materials placed before this Court including the records in original have been carefully perused.

9. The principal ground of challenge, as would appear from the writ petition is that vide the initial order of appointment of the Presidents and Vice-Presidents of SMDC of various schools vide the notification dated 04.06.2022, 77 number of schools were involved and vide the impugned notification dated 02.09.2022, only the school of the petitioner has been affected. This Court after perusal of the records have seen that before the impugned notification was issued on 02.09.2022, there was a consideration to the relevant factors. The records reveal that there was a prayer petition from the local people of the school and a suggestion was also received from the Principal whereby the respondent no. 6 was favored. This Court has also taken note of the fact that presently the notification holding the field for appointment of President and Vice-President of SMDC is the notification dated 27.10.2021. For the sake of convenience, the said notification is extracted hereinbelow:

*“GOVERNMENT OF ASSAM
SECONDARY EDUCATION DEPARTMENT
DISPUR :: GUWAHATI-6*

NOTIFICATION

Dated Dispur the 27th October, 2021

No. ASE 416/2014/Pt-II/192: In partial modification of the guidelines for constitution of School Management & Development Committee (SMDC) issued vide Govt. Notification No. ASE 416/2014/116, dated 24.06.2016 and letter No. ASE 416/2014/Pt-II/83, dated 05.04.2017, the Deputy Commissioner is hereby empowered to select the President and Vice-President of the School Management & Development Committee (SMDC) of an education institution of the concerned district with the approval of the Guardian Minister.

*Sd/- B. Kalyan Chakravarthy, IAS
Principal Secretary to the Government of Assam
Secondary Education Department"*

10. By the aforesaid notification, the power to select the President and Vice-President of the SMDC is vested upon the Deputy Commissioner of the concerned district with the approval of the Guardian Minister.

11. This Court has also noticed that the writ petitioner has chosen not to challenge the aforesaid notification dated 27.10.2021 and in fact there is not even a passing reference to the said notification in the entire writ petition. Further, the records, as observed above, contain reasons for issuing the impugned notification dated 02.09.2022 and the reasons appear to be germane and relevant.

12. This Court in exercise of powers under Article 226 of the Constitution of India is not required to go into the merits of the decision and only the decision making process can be a matter of scrutiny and in the instant case, the decision making process appears to be just, reasonable and in accordance with the requirement of the notification dated 27.10.2021.

13. The Hon'ble Supreme Court, in a catena of judgments pertaining to the powers of judicial review has reiterated the aforesaid proposition of law. For ready reference, in the case ***K. Vinod Kumar Vs. S. Palanisamy and Ors.*** reported in ***(2003) 10 SCC 681***, it has been laid down as follows:

“The law is settled that over proceedings and decisions taken in administrative matters, the scope of judicial review is confined to the decision making process and does not extend to the merits of the decision taken. No infirmity is pointed out in the proceedings of the Selection Board which may have the effect of vitiating the selection process. The capability of the appellant herein to otherwise perform as an LPG distributor is not in dispute. The High Court was not, therefore, justified in interfering with the decision of the Selection Board and the decision of the BPCL to issue letter of allotment to the appellant herein.”

14. This Court has also seen that the minimum qualification for a President of an SMDC is to be a Graduate and the respondent no. 6 fulfills the same.
15. In view of the aforesaid discussion, this Court is of the opinion that no case for interference is made out and the accordingly the writ petition is dismissed.
16. The records in original are returned back to the learned State Counsel.
17. No order as to cost.

JUDGE

Comparing Assistant