

(2015) 02 MEG CK 0006
In the Meghalaya High Court
Case No : Writ Petition (C) No. 2/2014

Ebrahim Miah and Others

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

Date of Decision : 18-02-2015

Acts Referred:

Citation : (2015) 02 MEG CK 0006

Hon'ble Judges : T. Nandakumar Singh, J.

Bench : Single Bench

Advocate : A.H. Hazarika, for the Appellant; H. Kharmih, GA, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

T. Nandakumar Singh, J.—Heard Mr. A.H. Hazarika, learned counsel appearing for the petitioners, Mr. H. Kharmih, learned GA appearing for the respondents No. 1-4 and Mr. SA Sheikh, learned counsel for the respondents No. 5 and 6.

2. The only ground for assailing the impugned order dated 19.12.2013 for construction/re-constitution of the new Managing Committee of Chandapara SSA, Lower Primary School is that the composition of the new Managing Committee is infraction of the composition of the Managing Committee of the school as provided under the Assam Education Department Rules and Orders, which is admittedly followed by the Govt. of Meghalaya inasmuch as, the Govt. of Meghalaya has not yet framed the rules in this regard.

3. The fact sufficient for deciding the matter in issue in the present writ petition is briefly noted. The petitioners are the guardians of some of the students of the Chandapara, SSA Lower Primary School. The first Managing Committee of the said Chandapara, SSA Lower Primary School was approved vide order of the Joint District Mission Co-ordinator, SSA Ampati, West Garo Hills dated 14.07.2010 for a period of 3 (three) years w.e.f. 30.04.2010 to 29.04.2013. Subsequently, the term of the said first Managing Committee was extended for another 6 (six)

months by the Joint District Mission Co-ordinator, SSA Ampati, West Garo Hills. Section 11 of the said Assam Education Department Rules and Orders, which is followed by the State of Meghalaya, prescribed the composition of the Managing Committees of Govt. Aided High and Middle Schools. For easy reference, Section 11 of the said Assam Education Department Rules and Orders is quoted hereunder:-

"Section 11 Managing Committees of Government Aided High and Middle Schools

"1. Every Government aided high and middle school shall be governed by a representative managing committee the constitution of which has been approved by the Inspector or Inspectress of Schools, as the case may be, save in cases where the Director allows an exception under special circumstances.

2. Save in cases where the Director sanctions a special committee under special circumstances each managing committee shall consist of one President and one Secretary both of whom shall be nominated by Government and ten ordinary members except in case of middle schools where this number will be nine which shall include-

(i) The Headmaster;

(ii) (iii) Two members except in case of middle schools where this number will be one, to be elected by the teaching staff (excluding the headmaster) of the school from among themselves;

(iv) (v) Two members to be elected by the guardians;

(vi) (vii) (viii) One member to be elected by the donors of not less than Rs. 500 and subscribers of Rs. 5 or above annually;

(ix) (x) For members to be nominated by Government;

Provided that-

(a) in the event of the headmaster being nominated as the Secretary an ordinary member may be nominated by the Government in place of the headmaster;

(b) when outsider and not the headmaster is nominated as the Secretary, either, the headmaster or one of the teachers representatives may be appointed as the Assistant Secretary when necessary; and

(c) when special circumstances so justify not more than two additional members in excess of the number prescribed in this rule may be nominated by Government.

Note- (1) The power of nomination, under this rule is delegated to the Inspector of Schools in case of boys" schools and to the Inspectress of Schools in case of girls" schools who shall make the nomination in consultation with the District or the Sub-divisional Officer where necessary and with the approval of the Director save in cases where such approval may be presumed to have been obtained

under any general or special orders of the Director. The nominated members may be either officials or non-officials but endeavour shall be made to have a person of medical profession in the committee and to include ladies as far as possible in case of girls' schools.

(2) In cases of item (vi) of this rule the seat shall remain vacant if there is no elector possessing the qualifications prescribed. In the event of the number of such electors being only one he may nominate himself for the seat in question.

3. Appointment of Government officers to managing committee of aided schools will be ex-officio so far as practicable. For such appointments prior approval of the authority under whose administrative control the officer concerned works is to be obtained. Once the appointment of a certain Government Officer as a member of a particular managing committee is approved under this rule, this approval will be presumed to apply to all his successors in that office unless the authority according the approval desires otherwise.

For appointment of District and Sub-divisional Officers as President of managing committees approval of Government may be presumed to have been obtained.

4. The Inspector of Schools may dissolve and reconstitute a managing committee at any time, if circumstances so demand subject to the approval of their Director save in cases where such approval may be presumed to have been obtained under any general or special orders of the Director.

5. Subject to Rule 4 above the term of a managing committee will ordinarily expire after a period of 3 years from the date of the first sitting of that committee with the required quorum or on its being reconstituted, but the members will be eligible for re-appointment or re-election as the case may be. Not later than 3 months before the expiry of the term, the Secretary of the committee shall intimate to the Inspector of Schools, the actual date on which the term of the existing committee expires and shall forward alongwith it the names of the newly elected members the election being held well ahead of time. If the names of the elected members are not received in time the managing committee shall be re-constituted by the Inspector of Schools with the nominated members and the headmaster, without any reference from or to the school authority. The quorum for such a committee shall be mentioned in the order of reconstitution. The names of the elected members may be subsequently included in the constituted committee when received....."

4. Learned counsel appearing for the parties admitted that the composition of the first Managing Committee of Chandapara SSA Lower Primary School approved by the Joint District Mission Co-ordinator, SSA Ampati, West Garo Hills vide order dated 14.07.2010 are in terms of the composition of the Managing Committees of Aided Schools as provided under Section 11 of the said Assam Education Department Rules and Orders, which has been quoted above in extenso. The Deputy Inspector of Schools, Ampati, West Garo Hills issued an office Circular dated 20.04.2009 that the Directorate will entertain only those applications

recommended by the Headmaster, Head Teacher of the concerned schools and also that the Secretary of the School Managing Committee shall be the Head Teacher only. The Managing Committee of the School not having its Head Teacher as Secretary will not be approved.

5. To the contra, the State respondents stated in their affidavit-in-opposition that subsequently the Govt. of Meghalaya issued an order dated 26.06.2009 that as the appointment of teachers in the upgraded SSA schools are mostly temporary and their appointments have not been approved and regularized by the concerned departmental authorities, there is likelihood of functioning the temporarily serving teachers as Secretary of the Managing Committees of the schools and accordingly, the Circular dated 26.06.2009 is partly modified. Section 15 of the said Assam Education Department Rules and Orders provides that the rules regarding Managing Committees of schools outside the classes mentioned in Sections 10 to 14 of the chapter will be prescribed by the competent authorities concerned. Learned counsel appearing for the parties submitted at the Bar that the competent authorities have not yet framed the rules under Section 15 of the said Assam Education Department Rules and Orders regarding Managing Committees of schools outside the classes mentioned in Sections 10 to 14 i.e. Govt. Aided Primary Schools. Accordingly, it is the submissions of the learned counsel appearing for the parties that the composition of the Managing Committees of the Govt. Aided Primary Schools shall be in the manner as provided under Section 11 of the said Assam Education Department Rules and Orders.

6. On bare perusal of the impugned order dated 19.12.2013 for re-constitution of the new Managing Committee of the Chandapara SSA Lower Primary School, it is not known clearly as to who are the Teachers representatives, who are the guardians representatives and who are the donors representatives. Section 11 of the said Assam Education Department Rules and Orders clearly provides that the new Managing Committees of the schools shall consist of representatives as provided under Section 11 of the said Assam Education Department Rules and Orders itself, which has been quoted above in extenso. Teachers' representatives are to be selected amongst the teachers, so also guardians' representatives are to be selected amongst the guardians of the students of the schools. There shall be selection of the teachers' representatives amongst teachers and also guardians' representatives amongst guardians of the students of the schools and also the donors' representatives amongst the donors' representatives for inclusion in the new Managing Committees of the schools. In the affidavit-in-opposition filed by the State respondents, there is no whisper that there was election or selection of the teachers' representatives, guardians' representative and donors' representatives for inclusion in the newly constituted Managing Committee of Chandapara SSA Lower Primary School vide impugned order dated 19.12.2013.

7. For the foregoing reasons, this Court is of the considered view that the

impugned order dated 19.12.2013 for construction/re-constitution of the Managing Committee of Chandapara SSA Lower Primary School is called for interference. Accordingly, the impugned order dated 19.12.2013 is hereby quashed and set aside. However, for efficient management of Chandapara SSA Lower Primary School and also in the interest of the students studying in the said Chandapara SSA Lower Primary School, the new Managing Committee is required to be constituted as expeditiously as possible in compliance with Section 11 of the Assam Education Department Rules and Orders or rules regarding the Managing Committees of the Schools i.e. Govt. Aided Primary Schools. It is also made further clear that the rule of the game should be framed before the actual play is started. In other words, rules if required to be framed under Section 15 of the Assam Education Department Rules and Orders should be framed before initiating the process for composition of the new School Managing Committee of the said school. Till the new School Managing Committee is formed, the management of Chandapara SSA Lower Primary School shall be carried out by the District Mission Co-ordinator SSA, West Garo Hills, Tura. Learned counsel appearing for the parties submitted at the Bar that the new School Managing Committee could be constituted within a period of 3 (three) months from the date of receipt of a certified copy of this judgment and order. In such circumstances, the concerned authority shall constitute the new Managing Committee of Chandapara SSA Lower Primary School within a period of 3 (three) months from the date of receipt of a certified copy of this judgment and order.

8. To the extent indicated above, this writ petition is allowed.