

(2006) 01 GAU CK 0048

Gauhati High Court

Case No: Writ Petition (Civil) No. 414 of 2004

Lut Ahmed Barbhuiya

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision: Jan. 10, 2006

Citation: (2006) 1 GLT 585

Hon'ble Judges: B.K.Sharma, J

Bench: Single Bench

Advocate: R.Chakraborty, H.R.A.Choudhary, P.Roy , F.U.Barbhuiyan, B.C.Das, A.Siddika, A.Begum, L.Rahman, Advocates appearing for Parties

Judgement

B.K. Sharma, J.

The challenge made in this writ petition is in respect of the selection of the respondent No. 5 as Muslim Marriage Registrar (MMR) & KAZI, Sonai in the district of Cachar. Four petitioners who were all contenders for the post of MMR & KAZI have filed the writ petition jointly. The petitioners have disclosed their educational qualifications as follows:

"The petitioner No. 1 passed Assam Senior Madrassa Final Examination (FM) and title Madrassa examination (MM) securing 2nd Division. He also passed HSLC and HSSLC final examination.

The petitioner No. 2 passed Assam Senior Madrassa Final Examination (FM). He also passed HSLC and HSSLC final examination.

The petitioner No. 3 passed Fazil from Rampur, U.P. which was treated to be equivalent to Assam Senior Madrassa final examination (FM) vide certificate dtd. 7.3.94 issued by the competent authority. He also passed MM Examination in 1995 and HSLC examination in 1988.

The petitioner No. 4 passed Assam Senior Madrassa Final Examination (FM) in 1994 securing 2nd division.

All the petitioners in addition to the above qualifications possess sufficient knowledge and acquaintance with the Arabic language and the Muslim law of Marriage and Divorce and as such all of them are qualified for the posts of Muslim Marriage Registrar and Kazi. The age of the petitioners are above 30 but below 40 years.

2. Section 3 of the Assam Moslem Marriages and Divorces Registration Act, 1935 (the Act) empowers the State Government to grant licence to any person, being a Moslem, authorizing him to registrar Moslem marriages and divorces which have been effected with certain specified limits, on application being made for such registration; and may revoke or suspend such license. As per the proviso to Section 3 not more than two persons shall be licensed to exercise the said functions within the same limit; providing further that, when two persons are so licensed to act within the same limit, the one shall be a member of the Sunni and the other of the Shia sect. Section 17 of the Act empowers the State Government to make rules.

3. In exercise of the powers conferred by Section 17 of the Act, the Government of Assam framed the Assam Moslem Marriage and Divorces Registration Rules, 1935 (the Rules). Rule I(b) of the Rules defines "The Permanent Committee" as follows:

"The Permanent Committee" means the body of persons for the time being appointed by the Government of Assam for the transaction of such business connected with the administration of the Act and the Kazis Act, 1880 (Act No. XII of 1980), as is entrusted to them in the Province of Assam."

4. To understand the controversy involved in the case, it will be appropriate to refer to the provisions of Rules 2,3,4,5 and 6, which have been extensively referred to during the course of hearing. They are quoted below:

"2. Nomination of Moslem Registrar : As soon as the Act comes into force in any area, the District registrar shall nominate sufficient number of persons possessing the qualifications specified in R. 3 to be licensed as Moslem registrars under S. 3. The District registrar shall also specify the limits within which each of the persons so nominated shall exercise the functions of Moslem Registrar.

3. Form of application: The District registrar's nominations shall be submitted to the Inspector General of Registration to be placed before the Permanent Committee, and shall be accompanied by the original application of the candidate in the following form, together with a certificate of good moral character and either a certificate that he has passed the Assam Senior Madrassa Final Examination or a certificate that he possess a sufficient acquaintance with the Arabic Language and the Moslem Law of Marriage Divorce, signed by three Mohammedan gentlemen of respectability and position.

Application for Moslem registrarship under the Assam Act IX of 1935 (An Act to provide for the voluntary registration to Moslem Marriage and Divorces

at.....Thana.....District of

4. Who may be nominated: Candidates for permanent posts of Moslem Registrar will be preferred if they have passed the Assam Senior Madrassa Final Examination; and they must be of good moral character. In the selection of Moslem Registrar preference shall ordinarily be given to candidates who are natives of or domiciled in Assam and who reside at a convenient place within the limits of the jurisdiction proposed; but no person shall be nominated a Moslem registrar merely by reason of some supposed hereditary right. The fact that a person is a pensioner shall not be a bar.

5. Jurisdiction : The limits within which a Moslem Registrar shall be licensed to act shall coincide with the limits of a subdistrict under the Indian Registration Act, or with the jurisdiction of such police station or stations or parts thereof, as the Government may, from time to time direct. The headquarters shall be at some convenient place within those limits.

6. Should the nomination of the District Registrar be disapproved by the Permanent Committee, the District Registrar may be requested to submit a fresh nomination, or the committee may select another candidate with the necessary qualifications for the approval of the Government."

5. The respondent No. 4 i.e. the District Registrar, Cachar got an advertisement published on 9.6.2003 inviting applications from the local Moslem candidates for the post of MMR & KAZI at Sonai. As regards the qualification, it was indicated that preference would be given to the candidates who have passed Assam Senior Madrassa final examination. Good moral character was also insisted upon by way of production of certificate. It was further indicated that the candidate should not be less than 30 years and more than 40 years and preference would be given to those candidates not in any other service. A condition imposed was that the candidate should ordinarily be a native of or domiciled in Assam and who resides at a convenient place within the limits of the jurisdiction proposed. It was indicated that an interview would be conducted.

6. The petitioners being qualified and eligible in terms of the advertisement applied for the post alongwith 14 other candidates and all the 18 candidates were called for the interview held on 22.8.2003 upon acceptance of their candidates. The interview board was consisted of the District Registrar, Deputy Registrar and subject expert. The selection confined the oral interview only and according to the petitioners they did well in the interview. The petitioners have further stated that out of 18 candidates only 3 candidates had the highest qualification in Arabic language and Moslem Law i.e. MM which is a post graduate degree. These three candidates are the petitioners No. 1 and 3 and one Sri Abdur Rahman. As against this, the respondent No. 5 is only Assam Senior Madrassa final Examination and HSLC passed. It is the further stand of the petitioners that the respondent No. 5 hails from

a village under Silchar Sadar Police Station and not under Sonai Police Station and that his house is situated about 18 KMs away from Sonai Bazar where the office of the MMR is situated and that too the river Barak intervening in between. The petitioners have further asserted that the respondent No. 5 was serving at Natun Hailakandi High Madrassa, but he was discharged from service due to his criminal activities. Thus, it is case of the petitioners that in all respects the respondent No. 5 was inferior to them and was not suitable for the post in terms of the advertisement.

7. The petitioners have further stated that as per the information derived by them, the interview board nomination the petitioners in order of preference at serial Nos. 2,3,1 and 5 respectively, while the respondent No. 5 was placed at serial No. 8. In terms of Rule 3 of the Rules, the respondent No. 4 submitted the records of the minutes of the nomination made by the interview board to the respondent No. 3 i.e. Inspector General "of Registration, Assam to be placed before respondent No. 2 i.e. the Permanent Committee.

8. The respondent No. 3 on receipt of the nominations from the respondent No. 4 placed the matter before the Permanent Committee alongwith the records, which contained the particulars of all the candidates and the minutes of the interview board. The permanent Committee in its meeting held on 6.3.2003 recommended the respondent No. 5 for the post of MMR & KAZI holding him to be more qualified and in view of his residence being nearest to the MMR office. Thereafter as per the requirements of the Rules, the Permanent Committee requested the respondent No. 3 to move the Government for issuance of necessary license.

9. The resolution adopted by the Permanent Committee in its meeting held on 6.12.2003, which has been annexed as Annexure3 to the writ petition reads as follows :

Resolution No. 3:

The PC examination the application and other testimonials of all 18 (eighteen) candidates. The PC after detailed discussion in the matter considered and recommended name of Md. Jamil Ahmed Majumder, S/o Late Nuruddm Majumdar to act as MMR at Sonai as he was found more qualified and in view of his residence nearest to the MMR Office. Accordingly PC request Inspector General of Registration, Assam to move Govt. for issuing necessary license. (Emphasis supplied)

Sd/

President Permanent Committee

And

Inspector General of Registration, Assam, Rupnagar, Guwahati32

10. After the aforesaid recommendation and selection of respondent No. 5, the petitioners submitted representations on 9.12.2003 and 22.12.2003 making a

grievance against the same. However, the representations having not been attended to the petitioners approached this Court by filing the instant writ petition. The grounds on which the impugned selection of respondent No. 5 has been challenged are as follows:

"I. The power of nomination of MMR being entrusted to the District Registrar (respondent No. 4), the Permanent Committee as has been done in the instant case could not have interfered with such nominations. Although the rule empowers the Permanent Committee to select another candidate, same cannot be done arbitrarily and without any reasonable ground.

ii. The respondent No. 5 being inferior in qualification coupled with lack of good moral character and also not being a local person, the reasons cited by the Permanent Committee towards his selection are contrary to the actual facts and thus the impugned resolutions is liable to be set aside and quashed.

iii. The respective residence of the petitioners being nearest to the MMR office as against the residence of the respondent No. 5 far away from the office, the Permanent Committee could not have selected the respondent No. 5 holding his residence to be nearest to the office ignoring the relevant facts. In this connection the petitioners have annexed Annexure5 certificate issued by the Secretary & Executive Officer, Sonai Anchalik Panchayat & Development Block certifying that the respondent No. 5 does not have any house at Sonai Bazar. The petitioners have also annexed certificates [Annexure6 and

6 (a)] showing their residences at Sonai Bazar.

iv. The selection of the respondent No. 5 by the Permanent Committee is in complete violation of the provisions of the Act.

11. Two separate counter affidavits have been filed, one by the respondents No. 2 & 3 i.e. the Permanent Committee and the Inspector General of Registration respectively and another by the respondent No. 5, the selected candidate. The petitioners, against the counter affidavit filed by the respondent No. 5, have also filed an affidavit in reply.

12. In the counter affidavit of respondents No. 2 & 3, they have stated that as per the applications submitted by the respondent No. 5 for the post of MMR, the respondent No. 5 originally hails from the village Bagpur under Silchar Police Station, which is 8 Km. away from the Silchar Sadar Kazi office and at present he resides at village Tulargram Pt. II, Pargona Sonapur Mouza and Tulargram Pt. II. Such a statement has been made on the basis of the AnnexureA certificate dated 16.12.2003 issued by the Circle Officer, Sonai Revenue Circle, Cachar. Be it stated here that the Permanent Committee made the recommendation in favour of the respondent No. 5, by the impugned resolution adopted in its meeting held on 6.12.2003 and circulated under Memo dated 12.12.2003.

13. In the said affidavit, it has been contended that the applications of all the candidates were received from the District Registrar and the Permanent Committee considered the same. The meeting of the Permanent Committee was held on 6.12.2003 and the respondent No. 5 was selected. As regards the interview/selection conducted by the District Registrar, Cachar awarding marks to the candidates, the respondents have stated that the District Registrar was requested to advertise the post of MMR and to send the list of candidates and their application forms etc. alongwith his nomination. The District Registrar conducted the selection by constituting a committee and in the list prepared by the Selection Committee, merit positions were assigned to the candidates on the basis of the marks obtained. The merit positions depicted by the petitioners have not been denied. However, it is the stand of the respondents that if the petitioner No. 4 who secured 1st position was to be selected by the Permanent Committee on the basis of the marks obtained by him, then in that even the constitution of the Permanent Committee would have been meaningless.

14. According to the respondents it is the Permanent Committee, which is to look after the business and administration of the office of the MMR and the District Registrar has no authority to select and prepare merit list and this duty is solely vested with the Permanent Committee and thus the District Registrar exceeded his jurisdiction and authority in making the selection of MMR. It has further been contended that although the District Registrar forwarded the purported select list containing the marks obtained by the candidates, but it did not specifically recommended/ nominated any one in the list. In paragraph 4 of the affidavit, the specific case of the respondents is that, the respondent No. 5 was select and recommended on the basis of his additional higher qualification i.e. in addition to FM, he is also HSSLC passed and therefore, it cannot be said that the selection of respondent No. 5 is illegal.

15. The respondent No. 5 in his counter affidavit has more or less highlighted the contentions raised in the counter affidavit of the respondents No. 2 and 3. He has depicted his education qualification as Assam Senior Madrassa Examination with HSLC and Preuniversity/HSSLC examination. In Paragraph 7, he has stated that the Permanent Committee selected him on the basis of his higher qualification as he has passed HSSLC examination in addition to Assam Senior Madrassa final examination (FM). In paragraph 8 of the affidavit, he has stated that he has been residing at Sonapur, Mouza Tularam Pt. II, which is one Km. from the Sonai MMR office and thus the contention raised by the petitioners regarding his residence is not tenable. He has also annexed the same very certificate dated 16.12.2003 as AnnexureB, which has been annexed by the official respondents as AnnexureA to their counter affidavit. According to him, the documents pertaining to the candidature of different candidates having been placed before the Permanent Committee, the committee considered the same and selected him, he being more suitable among the candidates.

16. In the reply affidavit filed by the petitioners, they have denied the contentions raised in the counter affidavit filed by the respondent No. 5. In paragraph 3 of the reply affidavit, they have depicted the percentage of marks obtained by the petitioners visavis the respondent No. 5, in various examinations.

HSLC HSSLC FM MM Petitioner 46% 35.3% 54.18% 51.21% No. 1 (2nd (3rd (2nd Div.) Div.) (Div.) Class) Petitioner 43.64% 40.2% 41.63% ML No. 2 (3rd (3rd (Div.) Div.) Div.)

Petitioner Passed Passed 49.4%

No. 3 (2nd

Class)

Petitioner 48%

No. 4 (3rd Div.)

Respondent 35.64% 37% 40.63% NIL

No. 5 (3rd (3rd (3rd Div)

Div.) Div.)

Be it stated here that while the FM degree is equivalent to graduation, the MM degree is equivalent to master degree. MM degree is considered to be the highest degree in Arabic language, Theology and Islamic jurisprudence. It is on that basis, having regard to the qualification of the respondent No. 5, which is FM, equivalent to graduation, the petitioners No. 1 and 3 assert that they are better qualified than the respondent No. 5.

17. As regards the residence of the respondent No. 5, the petitioners have placed reliance on the AnnexureB certificate by which it has been certified by the Circle Officer, Sonai Revenue Circle that the respondent No. 5 has no landed property at Mouza Tulagram Pt. I & Pt. II. As regards the criminal antecedent of the respondent No. 5, the petitioner in their rejoinder have highlighted as how the respondent No. 5 was involved in criminal activities while was serving as a teacher in Natun Hailakandi High Madrassa. According to the petitioners the respondent No. 5 was involved in theft of valuable articles and documents from the office of the Madrassa. In support of such a contention, the petitioners have annexed the copies of the letter of apology, dated 24.8.87 (AnnexureC) furnished by the respondent No. 5 and the resolution of the Managing Committee of the Madrassa discharging the respondent No. 5 from service.

18.1 have heard Mr. H.R.A. Choudhury, learned Sr. Counsel, assisted by Mr. F.U. Borbhuya, learned counsel for the petitioners. I have also heard Mr. B.C. Das, learned Sr. Counsel assisted by Ms. A Siddika and

Mr. P. Roy, learned Advocates for the respondent No. 5. Ms. R. Chakraborty, learned State Counsel made submissions on behalf of the official respondents. She has also produced the records. The records produced by the learned State Counsel apart from containing the list of candidates showing the marks each of the candidates secured from each of the members (total three) also contain the letter dated 12.3.2004 addressed to the learned Additional Sr. Govt. Advocate, Assam by the District Registrar, Cachar (respondent No. 4) forwarding therewith the parawise comments in respect of the writ petition.

19. The stand in the letter dated 12.3.2004 as well as the parawise comments is contrary to the stand in the counter affidavit filed by the respondent No. 2 and 3. For ready reference the letter dated 12.3.2004 is quoted below:

"OFFICE OF THE DISTRICT REGISTRAR

::CACHAR::SILCHAR:: No.A39/832003/413/R

dated Silchar the 12th March; 2004 To

ShriPrafullaRoy

Addl. Sr. Govt. Advocate Assam. Gauhati High Court Guwahati Subject :WP(C) No. 414/04

Lut Ahmed Barbhuiya Vs. State of Assam & Ors.

Reerence: Your Memo No. 118 Dtd. 25.2.04

Sir,

In reference to your Memo on the subject cited above, I have the honour to submit herewith the records of the interview Board (in original) alongwith parawise comments of the writ petition for favour of taking necessary action.

As regard to the position about the constitution and power and function of the interview Board the following Rules of the Assam Muslim Marriage and Divorces Registration Acts 1935 are appended below.

The Addl. Deputy Commission Act as District Registrar Govt. Notification No. Regn. 37/ 77/37 dt. 13.11.1981.

Rule:2

As soon as the Act comes into force in any area, the District registrar shall nominate sufficient number of persons possessing the qualifications specified in R.3 to be licensed as Moslem registrars under S. 3. The District registrar shall also specify the limits within which each of the persons so nominated shall exercise the functions of Moslem Registrar.

Rule: 3

The District registrar's nominations shall be submitted to the Inspector General of Registration to be placed before the Permanent Committee and shall be accompanied by the original application of the candidate in the following form, together with a certificate of good moral character and either a certificate that he has passed the Assam Senior Madrassa Final Examination or a certificate that he possess a sufficient acquaintance with the Arabic Language and the Moslem Law of Marriage Divorce, signed by three Mohammedan gentlemen of respectability and position.

Rule: 6

Should the nomination of the District Registrar be disapproved by the Permanent Committee, the District Registrar may be requested to submit a fresh nomination, or the committee may select another candidate with the necessary qualifications for the approval of the Government.

Constitution and function of the Interview Board.

As per prevailing practice an interview board is constituted by the District registrar Consisting of one Chairman and two members. District registrar himself acts as Chairman and Deputy Registrar (Registration) as one of the member and another member is taken from Muslim Community to ascertain the position as regard to the performance qualification knowledge and experience in Muslim Law of Marriage and Divorce of the candidates applied for the post for submission of the merit list showing the position of the candidates to the IGR Assam to select a suitable candidate for the post of MMR & Kazi at Sonai through permanent committee. Original applications alongwith testimonials have been forwarded to the IGR vide No. A.39/832003/1444/Rdt. 28.8.03.

Yours faithfully SoVIllegible District Registrar, Cachar."

20. In the parawise comments, following statements have been made in paragraph 6 and 8.

"6. As per Rule 3 of the Assam Muslim Marriage and Divorces Registration Act, 1935 the District Registrar's nomination shall be placed before the permanent committee and accordingly the oral interview was held by constituting a Interview Board for verification of the original educational qualification certificates, testimonials etc. and to as certain the position regarding performance experience, knowledge of the candidates for the post. All the candidates who appeared before the interview board were given marks on merits by the Interview board and a compiled marks list of the Board was forwarded to the Inspector General of registration, Assam alongwith original applications of all the candidates applied for the post of MMR & Kazi at Sonai together with attested copies of Educational qualification certificates and testimonials without nominating any name of candidate for consideration of the IGR Assam for selection of a suitable candidate for the post of MMR & Kazi at Sonai

through permanent committee.

8. As per Rule 3 of the Assam Muslim Marriage and Divorces Registration Act, 1935 District registrar's nomination shall be submitted to the Inspector General of Registration to be placed before the permanent committee and shall be accompanied by the original applications of the candidates together with necessary certificates as required under the said Rule and accordingly original applications of all the candidates applied for the post alongwith attested copies of Educational qualification certificates and other testimonials forwarded to the IGR Assam enclosing the merit complied mark list of the candidates of the Interview Board without nominating. The name of the candidate to be selected for the post with request to select a suitable candidate through learned subject expert members" of the permanent committee in the interest of Muslim population."

21. Upon totalling the marks obtained by the petitioners at the hands of the three members of the committee constituted by the three members viz. the District registrar, Deputy registrar and the subject expert, it appears that as against the total marks secured by the petitioners as 43 (18+10+15); 41 (21+10+10); 101 (36+35+30) and 82 (22+30+30) respectively, the respondent No. 5 secured 44 (19+10+15). Each of the members awarded marks individually out of the total marks fixed as 50. On the basis of the marks secured, in the normal circumstances if a choice is to be made, same would undoubtedly fall on the petitioner No. 3 followed by petitioner No. 4. The respondent No. 5 "s position would come only thereafter. This comparison, however, confines only to the petitioners visavis the respondent No. 5. Upon a random checking of the lists, it is found that there are candidates securing more marks than the respondent No. 5.

22. The question necessarily arises that, if the role of the District Registrar is only to send the applications and testimonials received from the candidates to the Permanent Committee for selection of MMR then what for the advertisement inviting applications for the post of MMR was instructed to be issued by the District Registrar wherein it was also stipulated that an interview would be held. It is in this context, learned counsel for the parties made their submissions on the interpretation of Rules 2,3,4,5 and 6 of the Rules, 1935. While the learned counsel for the petitioners put emphasis on the role of the District Registrar towards nominating Moslem Registrar, the learned counsel for the respondent No. 5 submitted that it is the Permanent Committee which alone is empowered to make the selection and that the only role assigned to the District registrar is to send the applications alongwith the testimonials received from the candidates. Viewed from this the interview conducted by the three members committee is redundant.

23. Without entering into the aforesaid controversy, it is to be seen as to whether the resolution adopted by the Permanent Committee towards selection of the respondent No. 5 is sustainable or not. The impugned resolution has been quoted above. Two grounds assigned for his selection are that he was found more qualified

and in view of his residence being nearest to the MMR office. On the face of it, none of the grounds is tenable. The respondent No. 5 cannot be said to be more qualified. Leaving aside the marks obtained by him visavis the petitioners No. 3 and 4, which are 44,101 and 82 respectively, the petitioner No. 1 is by far better qualified than the respondent No. 5. Similarly the petitioners No. 3 is also better qualified than the respondent No. 5, so far as the qualification of MM is concerned. While, the petitioner No. 3 is MM degree holder, the respondent No. 5 is only FM degree holder. Although the petitioner No. 3 and the respondent No. 5 have got the same qualifications but the percentage of marks obtained by the petitioner No. 2 in the examinations are higher than the respondent No. 5.

24. As regards the place of residence, while there is no denial that the respective residence of all the petitioners is nearer to the MMR office, a doubt has been created regarding the residence of respondent No. 5 being nearest. In fact there is no specific rebuttal on the part of the respondents including the respondent No. 5 to the specific averments made in paragraph 7 of the writ petition that the residence of the respondent No. 5 is 18 KMs away and that too intervenes by river Barak. Although, the respondents have annexed the copy of the certificate, dated 16.12.2003, certifying stay of the respondent No. 5 at a place nearer to the MMR office, but the certificate was issued after the date of the meeting of the Permanent Committee held on 6.12.2003. Thus, the Permanent Committee could not have taken into account the said certificate dated 16.12.2003 on 6.12.2003. The contentions of the petitioners in the rejoinder affidavit supported by the certificate issued by the competent authority lend supports to the case of the petitioners in the writ petition, in which specific avertments have been made regarding the long distance of the residence of the respondent No. 5 from the MMR office.

25. The Permanent Committee was entrusted with the task of selecting the best suitable candidate from amongst the candidates, whose applications and testimonials were sent by the respondent No. 4. The minutes of the meeting of the Permanent Committee held on 6.12.2003 do not disclose any cogent and satisfactory reason towards selection of respondent No. 5. As stated above, even if the marks assigned to the candidates by the three member committee are left aside and it is accepted that the Permanent Committee is all in all in the matter of selection of MMR irrespective of the recommendation made by the District Registrar, then also on the selfsame reason assigned by the Permanent Committee towards selecting the respondent No. 5, if not all the petitioners, atleast the petitioner No. 1,2 and 3, more particularly, the petitioner No. 1 ought to have been preferred he being by far better qualified than the respondent No. 5.

26. As regards the second ground of selection of the respondent No. 5, same is in serious dispute. In any case, the Permanent Committee, while selecting the respondent No. 5 on the said two grounds did not address itself to the same very grounds available to the petitioners and then to make a comparison amongst the

candidates. Transparency and fair play in the matter of selection demanded assigning of reasons, *prima facie* acceptable to all. In the instant case, the reasons assigned towards selecting the respondent No. 5 on the face of it being contrary to the materials available on records are not tenable. Here is a case, in which the candidate securing 44 marks has been preferred over the candidates securing 101 and 82 respectively. As noticed above, there are other candidates who secured more marks than the respondent No. 5. The Permanent Committee did not assign any reason as to how the respondent No. 5 is better placed in comparison to all other candidates. Merely by stating that the respondent No. 5 is more qualified and that his residence is nearest to the MMR office, which is *prima facie* contrary to the records and without adhering to the requirement of good moral character, about which mention has been made above, the Permanent Committee could not have selected the respondent No. 5.

27. In view of the above, I have no hesitation to set aside and quash the selection of the respondent No. 5 made by the Permanent Committee in its meeting held on 6.12.2003 vide resolution No. 3 and consequently, the license stated to have been issued to him authorizing him to perform the duties of MMR and KAZI also stands set aside and quashed. Writ petition stands allowed.

28. During the course of hearing, learned counsel for the parties strenuously argued on the interpretation of the term "nomination" mentioned in Rule 2,3,4 and 6 of the Rules of 1935. Learned counsel for the respondent No. 5 placed reliance on the decision of this Court as reported in 2005 (2) GLT 178 (Abdul LatifBarbhuuya Vs. State of Assam & Ors.). In the judgment, this Court interpreting the provisions of the aforesaid Rules has held that the power to select and recommend a candidate for the post of MMR and KAZI vests on the Permanent Committee constituted under the Rules and the Permanent Committee is the ultimate authority for the purpose of selection and recommendation for the post in question. It has been held that on a conjoint reading of Rule 2 and 3 of the Rules, it is evident that the District Registrar has no power and authority to prepare the select list in order of preference. In a nutshell, what has been held in the said judgment is that the District Registrar does not have any role to play except nominating the candidates possessing requisite qualifications for the purpose of selection by the Permanent Committee and the rules do not provide for any selection and preparation of any select list by the District registrar while nominating candidates to the Permanent Committee for the purpose of selection of MMR and KAZI.

29. It appears that in the aforesaid case the records produced by the learned State Counsel, did not contain any select list prepared by the District Registrar, unlike the present case, in which the records do contain, may not be a select list, but three different lists containing the marks allotted to each of the candidates by each of the three members of the committee constituted by the District Registrar. In the advertisement also there was indication for holding interview and in fact all the

candidates appeared in the interview. It was on that basis entire records containing the applications and testimonials received from the candidates including the aforesaid lists were forwarded to the Permanent Committee.

30. The provisions of the rules have been quoted above. As per Section 2(2) of the aforesaid Act of 1935, a Moslem Registrar means any person who is duly authorized under the Act to registrar Moslem marriage and divorces. Section 3 empowers the State Government to grant a license to any person, being a Moslem, authorizing him to registrar Moslem marriages and divorces, which have been affected within certain specified limits, on application being made for such registration; and may revoke or suspend such license.

31. The Rules of 1935 have been made under Section 17 of the Act. As per the provisions of Rule 2, as soon as the Act comes into force in any area, it is the District Registrar, who shall nominate sufficient number of persons possessing the qualifications specified in Rule 3 to be licensed as Moslem Registrars under Section 3. The District Registrar is also empowered to specify the limit within which each of the persons so nominated shall exercise the functions of Moslem Registrar.

32. As per the provisions of Rule 3, the District Registrar's nominations shall be submitted to the Inspector General of Registration to be placed before the Permanent Committee, and shall be accompanied by the original application of the candidate in the prescribed form together with the certificates relating to the moral character and the prescribed qualifications. Rule 4 provides for giving preference in the matter of nomination. Rule 6 provides that should the nomination of the District Registrar be disapproved by the Permanent Committee, the District Registrar may be requested to submit a fresh nomination, or the committee may select another candidate with the necessary qualifications for the approval of Government.

33. From the above, it will be seen that in the normal circumstances the Permanent Committee is to approve the nomination made by the District Registrar and it is only in case of disapproval of such nomination, the Permanent Committee either may request the District Registrar to submit fresh nomination or the committee itself may select another candidate with the necessary qualifications. On reading of Rule 6 relating to the term nomination and selection, it appears that the nomination made by the District Registrar has the semblance of selection inasmuch as the question of selection by the Permanent Committee will arise only when it disapproves the nomination made by the District Registrar.

34. The term "NOMINATION" has been defined in Black's Law Dictionary as follows:

"An appointment or designation of a person to fill an office or discharge a duty. The act of suggesting or proposing a person by name as a candidate for an office"

35. Rule 14 of the rules interalia reads as follows :

"When a permanent vacancy occurs, a notice calling for applications to be filed within one month shall be posted at the District and SubDivisional SubRegistry offices. The District Registrar will make its nomination from the applications filed, and the nominations will be scrutinized by the Permanent Committee under Rule2"

36. Rule 54 of the Rules speaks of supervisory jurisdiction of the Permanent Committee consisting of 6 members of which the Inspector General of Registration shall be the exofficio President. The committee is empowered to deal with the following matters.

- (a) The consideration of all nominations to the post of Moslem Registrar or KAZI.
- (b) Recommendations for dismissal and removal of Moslem Registrars and KAZIs.
- (c) The examinations of Moslem Registrars and KAZIs.
- (d) The inspection of the offices of Moslem Registrars.

37. On a conjoint reading of all the aforesaid provisions of the Rules of 1935, it appears that while the nomination as indicated in Rule 2 is connected with the initial stage of coming into force the Act of 1935 in any area, such nomination as envisaged in Rule 14 is in respect of occurring a permanent vacancy. However, under both the circumstances, it is the District Registrar, who is to make nomination.

38. Having regard to the provisions of the aforesaid Rules, more particularly the semblance of the term "fresh nomination" and "may select another candidate" appearing in Rule 6 together with the significance of the term "nomination" coupled with the fact that it is the District Registrar, who in terms of Rule 14 and even otherwise also and as admitted in the instant case is the authority to issue notice calling for applications for the post of MMR and KAZI, the question necessarily arises as to whether the role of the District Registrar is only to accept the applications and send them to the Permanent Committee for the purpose of making the selection. In the instant case, in the advertisement itself, the District Registrar indicated about the interview to be conducted and in fact a three members committee conducted the interview and each of the members awarded marks to the candidates. Rule 4 of the rules has laid down the parameters and yardsticks relating to the candidates who could be recommended as MMR.

39. In view of the above, it cannot be said that the role of the District Registrar is only to accept the applications and send them to the Permanent Committee for selection. The term "nomination" certainly signifies something more than that. This position is also established from Rule 6, which provides that in case of disapproval of the nomination by the Permanent Committee, it may ask for fresh nomination and/or may make the selection itself by way of selecting another candidate. Rule 54 of the rules signifies only the supervisory nature of job of the Permanent Committee.

40. In view of the above, coupled with the aforesaid judgment in Abdul Latif (supra), I am of the considered opinion that having regard to the importance and complexity of the case, the matter is required to be placed before the Hon"ble Chief Justice for his Lordship"s consideration to place it before the Division Bench in terms of Rule 2(d) of Chapter VA of the Gauhati High Court Rules, to resolve the following issue.

(i) Whether the term "nomination" appearing in Rule 2,3,4,6 and 14 of the Assam Moslem Marriages and Divorces Registrar Rules, 1935 signifies/presupposes any selection by the District Registrar or such selection is solely vest on the Permanent Committee?

(ii) Whether the role of the District Registrar is only to accept the applications and send them to the Permanent Committee for selection of MMR and KAZI?

41. Writ petition stands allowed and the above issues stand referred to the Hon"ble Chief Justice for his Lordship"s consideration to place the matter before the Division Bench in terms of the aforesaid provisions.