GAHC010009122015

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

Case No. : WP(C)/947/2015

RANGAUTI GIRLS H.S.SCHOOL and 2 ORS
REP. BY THE PRINCIPAL, MANAGING COMMITTEE OF THE SAID SCHOOL,
VILL.- RANGAUTI, DIST.- HAILAKANDI.

2: SECRETARY
RANGAUTI GIRLS HIGHER SECONDARY SCHOOL
DIST.- HAILAKANDI.

3: ANOWAR HUSSAIN MAZARBHUIYAN
SUBJECT TEACHER
RANGAUTI GIRLS HIGHER SECONDARY SCHOOL
HAILAKANDI

VERSUS

THE STATE OF ASSAM AND 5 ORS
TO BE REP. BY COMMISSIONER and SECY. TO THE GOVT. OF ASSAM,
EDUCATION SECONDARY DEPTT., DISPUR, GHY- 6.

2:SERETARY FINANCE DEPTT.
GOVT. OF ASSAM
DISPUR
GHY- 6.

3:DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
G HY- 19.

4:SECRETARY
ASSAM HIGHER SECONDARY EDUCATION COUNCIL
GHY- 21.

5:CHAIRMAN

DIST. SCRUTINY COMMITTEE FOR HIGHER EDUCATION
HAILAKANDI DIST.
HAILAKANDI.

6:INSPECTOR OF SCHOOLS
HAILAKANDI

B E F O R E

Hon'ble MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioners: Shri M. Khan, Advocate.

Advocate for respondents : Shri U. Sarma, SC, Secondary Education,
Ms. D. Das Barman, Govt. Advocate,
Shri D. K. Roy, SC, AHSEC,
Shri B. Gogoi, SC, Finance.

Date of hearing : 26.06.2023

Date of judgment : 27.06.2023

JUDGMENT & ORDER

Heard Shri M. Khan, learned counsel for the petitioners. Also heard Shri U. Sarma, learned Standing Counsel for the Secondary Education Department; Ms. D. Das Barman, learned State Counsel; Shri D. K. Roy, learned Standing Counsel, Assam Higher Secondary Education Council; and Shri B. Gogoi, learned Standing Counsel, Finance Department.

2. The facts projected in the writ petition is that the Rangauti Girls HS School (hereinafter the School) was established in the campus of the existing Rangauti Girls High School in the district of Hailakandi. The said establishment has been said to have been done as per a resolution for upgradation of the School and accordingly permission of the same was sought for in the year 2000. As such permission was not granted, the petitioner School had approached this Court wherein an order was passed on 15.02.2000 in WP(C) No.4206/1999. Pursuant there to, the Higher

Secondary Education Council had issued letters whereby Feasibility Report as well as recommendation was made. The permission was ultimately granted on 20.01.2006. However, the provincialisation of the School was denied on the ground that there was a delay of 19 days in granting the permission. The impugned order dated 04.04.2014 was passed whereby the rejection was made on the aforesaid ground of delay of 19 days.

3. Shri Khan, the learned counsel for the petitioners has submitted that the petitioners were not responsible for the delay of 19 days in giving the permission. He submits that while the cut-off date was 01.01.2006, the permission to the petitioners School was given on 20.01.2006 i.e. after a period of 19 days. It is submitted that the process was initiated much prior to 01.01.2006 and therefore the rejection is not sustainable in law as the petitioners cannot be held liable for the delay of 19 days.

4. It is further submitted that under similar circumstances, certain other Schools had approached this Court and had filed WP(C) No. 5975/2013 (Dakhin Number Para High School Vs The State of Assam & 4 Ors.) in which an order was passed on 24.02.2014 directing granting of permission with retrospective effect. The learned counsel for the petitioners prays for similar order.

5. Shri Khan, learned counsel has also relied upon another order dated 04.03.2016 passed by this Court in WP(C) No. 1448/2016 wherein this Court had directed for consideration of the case of the petitioners. It is further submitted that pursuant to such direction, a Scrutiny Committee had examined the matter and had recommended the same to be taken up by the State Level Scrutiny Committee.

6. Reliance has also been made on an order of this Court dated 08.12.2014 passed in WP(C) No. 6377/2014 wherein a direction was given for consideration of the case of the petitioners for changing the date of its recognition *w.e.f.* 12.01.2006 to

01.01.2006.

7. *Per contra*, Shri U. Sarma, learned counsel for the Department has submitted that a policy decision was arrived at with respect to giving the benefit of provincialisation in which a cut-off date of 01.01.2006 was laid down. The impugned order dated 04.04.2014 makes it clear that Venture Educational Institutions which have been accorded permission on or after 01.01.2006 shall not be provincialised and no such educational institutions shall be allowed to remain functional. He accordingly submits that the writ petition may be dismissed.

8. The rival submissions made by the learned counsel for the parties have been duly considered and the materials placed before this Court have been carefully examined.

9. The grievance of the petitioners is against the order dated 04.04.2014 whereby the claim for provincialisation has been rejected on the ground that the permission was beyond the deadline of 01.01.2006. It is no longer *res integra* that fixing a cut-off date cannot be termed to be an unreasonable action which is in teeth of Article 14 of the Constitution of India. What is required is that while fixing such a cut-off date, the relevant materials are taken into consideration and that such fixation is not based on extraneous facts.

10. In the instant case, fixing of the cut-off date with regard to according of permission which was 01.01.2006 is as such, not the subject matter of dispute and the petitioner is only questioning the action of the respondent authorities in not condoning 19 days in construing the matter with regard to giving the benefits of provincialisation.

11. The order dated 24.04.2014 of this Court which has been relied upon by the petitioners had involved 3 (three) writ petitions involving 3 (three) schools and the relief prayed for was to direct the respondent-SEBA to grant the recognition *w.e.f.*

01.01.2005 and 01.01.2006 respectively by contending that though the Inspector of Schools and the Director had recommended the recognition *w.e.f.* such dates, the Board had given the effect from 01.01.2007. This High Court vide the aforesaid order has however observed that the SEBA had accepted the recommendation in spite of which the effect was not given and therefore the order was passed.

12. In the case of WP(C)/ 6377/2014 (Panigaon Higher Secondary School) a direction was issued for consideration of a representation for changing the date of recognition from 12.01.2006 to 01.01.2006 and thereafter for consideration of the case for provincialisation.

13. In the case of WP(C)/1448/2016 (Kazaikata PM Academic High School) the relief was confined to referring the matter to the Director of Secondary Education for placing the case of the petitioners school before the Committee concerned which was accordingly done vide order dated 04.03.2016.

14. Shri Khan, the learned counsel for the petitioners has also placed before this Court the views of the Scrutiny Committee in respect of the aforesaid 2 (two) Schools, namely, Panigaon Higher Secondary School and Kazaikata PM Academic High School from which it appears that the matter was referred for examination in the State Level Scrutiny Committee.

15. Juxtaposed, the facts of the present case are on a different footing wherein there was a similar order of this High Court dated 09.04.2012 passed in WP(C)/2720/2012 filed by the petitioners requiring consideration of the case of the petitioners. Pursuant to such direction, the matter was considered by the Department in which it was seen that the permission was accorded *w.e.f.* 21.01.2006. It was therefore held that the said permission was beyond the deadline of 01.01.2006 and there was a prayer for condonation of the delay of 19 days. However, there being no

powers vested to relax any provisions of the ***Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011***, the said representation could not be entertained.

16. What ultimately would require an adjudication is the legality and validity of the said order dated 04.04.2014. This Court has also been apprised that the Act of 2011 has been repealed and a new Act of 2017 is in operation.

17. An examination of the Act of 2011 (since repealed) would reveal that no powers of relaxation of any of the provisions is provided. Under such circumstances, it would be difficult to term the reasons assigned in the impugned order dated 04.04.2014 as arbitrary or baseless. Rather, this Court is of the view that the said reason is a cogent one based on the provisions of the Act.

18. This Court in exercise of its jurisdiction under Article 226 of the Constitution can review the decisions of the authorities judicially in which it is only the decision making process which can be examined. In the expressions used by the Hon'ble Supreme Court, it is the legality of such decision making process and not the soundness of such decisions which can be the subject matter of examination.

19. There is another aspect of the matter which this Court has made a passing reference above, namely, the legality of a cut-off date as 01.01.2006 as the date of according permission. Apart from the fact that such fixation of cut-off date is not the subject matter of challenge, the scope of challenging a cut-off date is also limited. It is a settled principle of law that fixation of cut-off dates are policy decisions which are normally not matters of interference by a Court as it is within the domain of the Executive and the Rule making authority. Such fixation can be interfered with only on exceptional grounds wherein it can be demonstrated by the petitioners that the same is blatantly unreasonable or illegal or outrageously opposed to public policy and public

interest.

20. The Hon'ble Supreme Court ***Hirandra Kumar v. High Court of Allahabad, (2020) 17 SCC 401*** has laid down as follows:-

> "***21.*** *The legal principles which govern the determination of a cut-off date are well settled. The power to fix a cut-off date or age-limit is incidental to the regulatory control which an authority exercises over the selection process. A certain degree of arbitrariness may appear on the face of any cut-off or age-limit which is prescribed, since a candidate on the wrong side of the line may stand excluded as a consequence. That, however, is no reason to hold that the cut-off which is prescribed, is arbitrary. In order to declare that a cut-off is arbitrary and ultra vires, it must be of such a nature as to lead to the conclusion that it has been fixed without any rational basis whatsoever or is manifestly unreasonable so as to lead to a conclusion of a violation of Article 14 of the Constitution.*
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> …
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> ***27.*** *… Essentially, the determination of cut-off dates lies in the realm of policy. A court in the exercise of the power of judicial review does not take over that function for itself. Plainly, it is for the rule-making authority to discharge that function while framing the Rules."*

21. In a recent decision dated 05.04.2020 passed in the case of ***Shikhar & Anr. Vs. National Board of Examination & Ors.*** reported in ***2022 6 Scale 63***, the Hon'ble Supreme Court has referred to the aforesaid decision with approval.

22. In view of the aforesaid discussion and the law holding the field, this Court is of the view that no case for interference has been made out and accordingly the writ petition stands dismissed.

JUDGE

Comparing Assistant