



GAHC010208432018

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

Case No. : WP(C)/6592/2018

SAHID ALI AND 9 ORS.

S/O- CHAMSUT JAWAN, R/O- VILL- JARAGURI NO. 1, P.O- GERUKABARI,
P.S- MANIKPUR, PIN- 783380, DIST- BONGAIGAON

2: SHAJAHAN SARKER

S/O- LATE BAZAAR UDDIN

R/O- PURAN BIJNI

P.O- BIJNI

DIST- CHIRANG

PIN- 783385

3: MORJINA BEGAM

W/O- ABDUS ALI

D/O- MD. MOJAMMEL HOQUE

ADDRESS NACHAGURI NO. 1

P.O- GORAIMARI

P.S- MASIKPUR

PIN- 783380

DIST- BONGAIGAON

4: HOBIBOR RAHAMAN

S/O- MD. SOHIR UDDIN

VILL- GERUKABARI

P.O- GERUKABARI

P.S- MANIKPUR

PIN- 783385

DIST- CHIRANG

5: MOKBUL HUSSAIN

S/O- MD. ABDUL ALI

VILL- NACHAGURI NO. 1

P.O- GORAIMARI

P.S- MAKIKU

PIN- 783380



DIST- BONGAIGAON

6: RUNA Lyla BEGUM
W/O- KURMAN ALI
VILL- NACHAGURI NO. 1
PIN- 783380
DIST- BONGAIGAON

7: ALAUDDIN AHMED
S/O- MD. GOLAP HUSSAIN
R/O- NACHAGURI NO. 1
P.O- GORAIMARI
P.S- MANIKPUR
PIN- 783380
DIST- BONGAIGAON

8: MOINAL HOQUE
S/O- LATE JAHAR UDDIN
VILL- DOTURI
P.O- KAWATIKA
PIN- 783385
DIST- CHIRANG

9: HAZARAT ALI
S/O- MD. HASEN ALI
VILL- DOTURI
P.O- KAWATIKA
P.S- BIJNI
PIN- 783385
DIST- CHIRANG

10: MUNAB ALI
S/O- ABDUL RAHMAN
VILL- DUTORI
P.O- KAWATIKA
P.S- BIJNI
PIN- 783390
DIST- CHIRAN

VERSUS

THE STATE OF ASSAM AND 11 ORS
REP. BY ITS COMMISSIONER TO THE GOVT OF ASSAM, EDUCATION
(SECONDARY)DEPTT, DISPUR, GUWAHATI- 06

2:THE COMMISSIONER AND SECRETARY
TO THE GOVT OF ASSAM
SECONDARY EDUCATION DEPTT



DISPUR
GUWAHATI- 06

3:THE SECRETARY TO THE GOVT OF ASSAM
SECONDARY EDUCATION DEPTT
DISPUR
GUWAHATI- 06

4:THE JOINT SECRETARY
TO THE GOVT OF ASSAM
SECONDARY EDUCATION DEPTT
DISPUR
GUWAHATI- 06

5:THE DIRECTOR OF SECONDARY EDUCATION
KAHILIPARA
GUWAHATI- 19
ASSAM

6:THE DIRECTOR OF ELEMENTARY EDUCATION
KAHILIPARA
GUWAHATI- 19
ASSAM

7:THE BODOLAND TERRITORIAL COUNCIL
REP. BY ITS PRINCIPAL SECRETARY
BTC
KOKRAJHAR
PIN- 783370

8:THE INSPECTOR OF SCHOOLS
BIJNI
DIST- CHIRANG
PIN- 783385

9:THE DIRECTOR OF SECONDARY EDUCATION
BTC
KOKRAJHAR
PIN- 783370

10:THE DISTRICT LEVEL COMMITTEE
REP. BY ITS CHAIRMAN
OFFICE OF THE PRINCIPAL SECRETARY BTC
KOKRAJHAR
PIN- 783370

11:THE BLOCK LEVEL COMMITTEE
REP. BY ITS CHAIRMAN



OFFICE OF THE DISTRICT ELEMENTARY EDUCATION OFFICER CHIRANG
KAJALGAON
PIN- 783385

12:ANISUR RAHMAN
THE HEAD MASTER ZAKIR HUSSAIN PUBLIC HIGH SCHOOL
BIJNI
DIST- CHIRANG
PIN- 78339

Advocate for the Petitioner : MR. B P BORAH

Advocate for the Respondent : SC, SEC. EDU.

Linked Case : WP(C)/679/2018

SAHID ALI AND 10 ORS.
S/O CHAMSUT JAWAN
VILL- JARAGURI NO. 1
P.O. GERUKABARI
P.S. MANIKPUR
PIN - 783380
DIST. BONGAIGAON

2: SHAJAHAN SARKAR
S/O LT. BAZAAR UDDIN
ADDRESS- PURAN BIJNI
P.O. BIJNI

DIST. CHIRANG

PIN - 783385

3: MORJINA BEGAM
W/O MD. MOJAMMEL HOQUE
ADDRESS- NACHAGURI NO. 1 P.O. GORAIMARI
P.S. MASIKPUR
PIN - 783380
DIST. BONGAIGAON

4: HOBIBOR RAHMAN
S/O MD. SOHIR UDDIN
VILL- GERUKABARI
P.O. GERUKABARI
P.S. MANIKPUR PIN - 783385
DIST. CHIRANG



5: ABUBAKKAR SIDDIQUE
S/O AFAJUDDIN MUSULLI
VILL- NO. 2 SUPARIGURI
P.O. FAGUNAGAON
PIN - 783380

6: MOKBUL HUSSAIN
S/O MD. ABDUL ALI
VILL- NACHAGURI NO. 1
P.O. GORAIMARI
P.S. MAKIKU
PIN - 783380
DIST. BONGAIGAON

7: RUNA LAYLA
W/O KURMAN ALI
VILL- NACHAGURI NO. 1
PIN - 78380

P.O. DIST. BONGAIGAON

8: ALAUDDIN AHMED
S/O MD. GOLAP HUSSAIN
ADDRESS- NACHAGURI NO. 1

P.O. GORAIMARI
P.S. MANIKPUR PIN - 783380
DIST. BONGAIGAON

9: MOINAL HOQUE
S/OLT. JAHAR UDDIN
VILL- DOTURI
P.O. KAWATIKA
PIN - 783385
DIST. CHIRANG

10: HAZARAT ALI
S/O MD. HASEN ALI
VILL- DOTURI
P.O. KAWATIKA
P.S. BIJNI
PIN - 783385
DIST. CHIRANG.

11: BAHARUL ISLAM
S/O FAJAL HOQUE
VILL- GERUKABARI
P.S. MANIKPUR



PIN - 783380
DIST. BONGAIGAON.
VERSUS

THE STATE OF ASSAM AND 8 ORS.
REP. BY ITS COMMISSIONER AND TO THE GOVT. OF ASSAM

EDUCATION (SECONDARY) DEPARTMENT

DISPUR
GUWAHATI -06.

2:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
SECONDARY EDUCATION DEPARTMENT
DISPUR
GUWAHATI-06.

3:THE DIRECTOR OF SECONDARY EDUCATION

KAHILIPARA
GUWAHATI-19
ASSAM
4:THE DIRECTOR OF ELEMENTARY EDUCATION

KAHILIPARA
GUWAHATI -19
ASSAM
5:THE BODOLAND TERRITORIAL COUNCIL

REP. BY ITS PRINCIPAL SECRETARY
BTC
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DIST. CHIRANG.
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REP. BY ITS CHAIRMAN
OFFICE OF THE PRINCIPAL SECRETARY BTC
KOKRAJHAR.
9:THE BLOCK LEVEL COMMITTEE
REP. BY ITS CHAIRMAN

OFFICE OF THE DIST. ELEMENTARY EDUCATION OFFICER



CHIRANG
KAJAL GAON.

B E F O R E
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI
JUDGMENT & ORDER

Advocate for the petitioners : Shri B.P. Borah, Advocate
Advocates for respondents : Shri B. Kaushik, SC, Education Department,
Ms. R.B. Bora, SC, BTC.

Date of hearing : 21.06.2023

Date of judgment : 21.06.2023

- 1.** Heard Shri B.P. Borah, learned counsel for the petitioners. Also heard Shri B. Kaushik, learned Standing Counsel for the Education Department and Ms. R.B. Bora, learned Standing Counsel, BTC.
- 2.** Both these writ petitions being connected, are taken up for disposal by this common judgment and order.
- 3.** While the first writ petition being WP(C) 679/2018 has been filed challenging an order dated 18.01.2018 of amalgamation of the Bijni M.E. Madrassa with the Zakir Hussain Public High School in the district of Bongaigaon, the second writ petition being WP(C)/6592/2018 has been filed against an order dated 30.06.2018 by which the representation of the petitioners submitted in terms of an order of this Court has been rejected.



4. While there are 11 nos. of petitioners in the first writ petition, there are 10 numbers of petitioners in the second writ petition. Before going to the facts and the issue which had arisen for consideration, it would be necessary to record who are the petitioners. In the first writ petition, it has been stated in paragraph 2 that the petitioners are Guardian of the students studying in Bijni M.E. Madrassa out of which petitioner nos. 3, 4, 7 & 6 are members of the School Management Committee. A similar statement has also been made in paragraph 2 of the second writ petition.

5. The case projected by the petitioners is that pursuant to a scheme referred to as 'Siksha Khetra', the Bijni M.E. Madrassa was amalgamated with the Zakir Hussain Public High School vide a notification dated 18.01.2018. It is the contention of the petitioners that such amalgamation was in contravention with the provisions of the RTE Act, 2009.

6. It is the case of the petitioners that there were 401 students with 11 teachers in the Binji M.E. Madrassa whereas the Zakir Hussain Public High School had 338 students and 9 teachers. It is also contended that the infrastructure and library facilities are compliant to the RTE Act. The petitioners submit that representations were filed against the aforesaid action of amalgamation which were not considered in the proper perspective.

7. The aforesaid amalgamation order of 18.01.2018 which is the subject matter of challenge in the first writ petition in which this Court vide an order dated 09.03.2018 had directed to submit a representation to the Commissioner and Secretary, Secondary Education Department for consideration of the case of the petitioners. Pursuant to the said observation, representation was submitted on 02.04.2018 which however was rejected on 13.06.2018.

8. Shri Borah, the learned counsel for the petitioners by drawing the attention of this Court to the impugned order dated 13.06.2018 has submitted that the rejection has been done without proper application of mind and without taking into consideration the objective and purpose of the Office Memorandum dated 22.09.2016 on the subject of "Siksha Khetra" which was a scheme for amalgamation and merger of different schools. He submits that there has been violation of the said Office Memorandum, more specifically with regard to the requirement of a Headmaster wherein the numbers of students in a School is more than 100. It is further submitted that the amalgamation / merger is to be done from M.E. Schools with High Schools, whereas in the instant case an M.E. Madrassa is sought to be amalgamated with a High School which is not covered under the purview of the said Office Memorandum. He submits that the School in question, i.e., M.E. Madrassa had 401 numbers of students with 11 teachers and the merger would be in violation of the RTE Act.

9. The learned counsel has referred to Section 19 of the Act which requires to meeting of norms and standards for a School. Reference has also been made to the Schedule of the Act more specifically under Serial No. 1 (b) (3) wherein it has been stated that when the children are more than 100, there has to be a full time Head-teacher.

10. Shri Borah, the learned counsel has also referred to the Assam Education (Provincialisation of Services of Teachers and Re-Organisation of Educational Institutions) Act, 2017, more specifically Section 12 thereof as per which, reasons are required to be recorded in writing in case of amalgamation of an existing educational institutions with a nearby Institution. The Rules framed under the RTE Act namely the Assam Right of Children to free and Compulsory Education Rules, 2011 has also been pressed into service by contending that under Rules 13 (2), the function of the



Managing Committee has been stated which amongst others includes monitoring of the working of the Schools. The learned counsel for the petitioners accordingly submits that in the present situation and facts and circumstances, the amalgamation was not at all warranted as there was no reason and there was no justification for such amalgamation apart from not meeting the objective and purpose of the scheme for amalgamation.

11. *Per contra*, Shri B. Kaushik, learned counsel for the Department, has at the outset questioned the locus of the petitioners. He submits that none of the petitioners are either teachers or employees of the M.E. School but are only guardians and therefore, no legal right of the petitioners is affected by the amalgamation. He, further, submits that though four of the petitioners who are guardians have also been stated to be members of SMC, the tenure of the SMC being for a limited period and the objective is to monitor the school, no legal rights appear to have been infringed.

12. With regard to the contention made on behalf of the petitioners that after amalgamation, it would be the SMC of the High School which would prevail for a time being, he submits that apart from the inbuilt provision which contemplates that in the subsequent SMC, there would be representatives of the Schools which had been merged, the entire scheme was unsuccessfully challenged before this Court and the appeal was also dismissed by the Hon'ble Supreme Court. He, therefore, submits that even otherwise the contentions made by the petitioners are not available to them.

13. Dealing, specifically with the submissions made, the learned counsel for the Department has submitted that reference to Section 12 of the Assam Education (Provincialisation of Services of Teachers and Re-Organisation of Educational Institutions) Act, 2017 is misplaced as the said Act is primarily for the purpose of Provincialisation of Venture Schools and is not connected with the instant case. He



further submits that amalgamation / merger and shifting or expansion of Educational Institutions appearing in Section 12 only applies to a venture school and is not applicable in the amalgamation of institutions which are already provincialised and therefore, the requirements for recording reasons in writing will not arise at all. He otherwise submits that the entire amalgamation has been done in terms of the Office Memorandum dated 22.09.2016 the validity of which was also upheld by the Hon'ble Supreme Court.

14. By drawing the attention of the said Office Memorandum, the learned counsel for the Department has submitted that as per paragraph 3 (1), all the Schools situated in the same campus shall be merged with the highest School. It further states that the SMC/SMDC of the highest School shall continue and the SMC/SMDC of others School will be withdrawn. However, as indicated above, there is a mechanism for inclusion of representatives of the M.E. School whereby it has been stated that the SMC/SMDC shall be re-constituted with inclusion of two representatives from Guardians and one from teachers of each schools amalgamated.

15. With regard to the submission that there is no reference to a situation for amalgamation of M.E. Madrassa with a High School in the Office Memorandum, the learned Standing Counsel submits that the aforesaid position is clarified by paragraph 3 (13) as per which, similar criteria is to be considered in case of M.E. Madrassa, High Madrassa and Higher Secondary Madrassa.

16. A contention was made on behalf of the petitioners with regard to the provisions of paragraph 3 (10) which lays down that only in case when the enrolment is poor, i.e., less than 15 students in each class of an M.E. School, the same may be merged with a **nearby** High School. The said contention however has been refuted by the learned Standing Counsel by submitting that the same is misplaced inasmuch as



paragraph 3 (10) has to be read with paragraph 3 (1) whereas paragraph 3 (1) lays down that all the schools situated in the **same campus** shall be merged, paragraph 3 (10) lays down that a M.E. School with poor enrolment of less than 15 students may be merged with a **nearby** High School. He further submits that in the instant case, both the M.E. Madrassa and the High School are not only in the same campus but in the same building itself.

17. After hearing the parties and on consideration of the materials on record, this Court is of the considered opinion that a writ petition of this nature made by certain Guardians of the M.E. School is not maintainable as no legal right, whatsoever of a Guardian of a student is involved by amalgamation of the School in question with the High School. Though 4 (four) nos. of the Guardians- petitioners were also members of the SMC of the M.E. School, there is no vested right to continue in the same capacity as members of SMC as the SMC itself is for a particular tenure. Further, paragraph 3 (1) of the Office Memorandum dated 22.09.2016 makes it clear that on such amalgamation, it is only the SMC / SMDC of the High School which shall continue and the SMC of other schools would be withdrawn and such SMC / SMDC would be re-constituted with inclusion of two representatives from the Guardians and one from teachers of each schools amalgamated. This Court has already recorded that the validity of the Office Memorandum dated 22.09.2016 has already been upheld by this Court and also affirmed by the Hon'ble Supreme Court.

18. Although this Court is of the opinion that the writ petition in its present form filed by the present petitioners is not maintainable, since the petitions are pending since long and arguments advanced on merits, those are also being dealt with by this Court as hereunder.

19. This Court finds force in the argument made on behalf of the Department that



the Act of 2017 which contains Clause 12 as per which reasons are to be recorded in writing for amalgamation is not at all applicable in the instant case as such amalgamation is *qua* Schools in venture stages and not schools like the present one which are already provincialised.

20. This Court also does not find any force in the contention of the petitioners that there would be any prejudice caused in the terms of monitoring and functioning as an SMC/SMDC would always be there for the amalgamated schools. This Court also finds that the contention made that there is no provision of amalgamation of a M.E. Madrassa with High School is misplaced as the position is clarified by paragraph 3 (13) of the Office Memorandum. In any case, the objective of the Office Memorandum is to implement a scheme for amalgamation and there being a clear guideline for schools situated in the same campus to be merged with the Highest School, this Court is unable to accede to the prayer made in the writ petition.

21. In view of the above, both the writ petition stands dismissed.

22. No order as to cost.

JUDGE

Comparing Assistant