

GAHC010158312020



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

Case No. : PIL/66/2020

DEBARGHA ROY
S/O- SHRI DEBOJIT ROY, R/O- H.NO. 43, LAMB ROAD, LATASIL, DIST.-
KAMRUP (M), GHY-01

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE CHIEF SECY. TO THE GOVT. OF ASSAM, DISPUR, GHY-01,
DIST.- KAMRUP (M), ASSAM

2:THE COMM. AND SECY. TO THE GOVT. OF ASSAM
ELEMENTARY EDUCATION DEPTT.
BLOCK-C (GROUND FLOOR)
ASSAM SECRETARIAT
DISPUR
GHY-06

3:THE SECRETARY TO THE GOVT. OF ASSAM
ELEMENTARY EDUCATION DEPTT.
BLOCK-C (GROUND FLOOR)
ASSAM SECRETARIAT
DISPUR
GHY-06

4:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
DIRECTORATE OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GHY-19

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER
KAMRUP (M)
OFFICE OF THE DISTRICT ELEMENTARY EDUCATION OFFICER
KAMRUP (M)
GHY-0

Advocate for the Petitioner : MR N DUTTA

Advocate for the Respondent : GA, ASSAM

BEFORE
HON'BLE THE CHIEF JUSTICE (ACTING) MR. N. KOTISWAR SINGH
HON'BLE MR. JUSTICE MANISH CHOUDHURY

:: O R D E R ::

18.11.2020

[N. Kotiswar Singh, CJ(Acting)]

Heard Ms. S. Sarma Hazarika, learned counsel for the petitioner. Also heard Mr. T.C. Chutia, learned Govt. Advocate appearing for respondent No. 1 and Mr. N. J. Khataniar, learned Standing Counsel, Education (Elementary) Department appearing for respondent Nos. 2 to 5.

2. The present PIL has been filed seeking for an appropriate direction to the State to ensure proper compliance or implementation of the requirement of Section 12(1)(c) of the Right of Children to Free and Compulsory Education Act, 2009 providing for admission of at least 25% of the strength of the class of children belonging to weaker sections and disadvantaged groups in the neighbourhood and to provide free and compulsory education till its completion.

3. It has been submitted that though the State has issued the notification on 04.03.2013 for implementation of the provisions of the Act, there is no effective implementation of the same. The endeavour of the petitioner to obtain necessary information about the implementation of the Act has been unsatisfactory. The endeavour has made little success as the petitioner has only got the information about the number of students being enrolled. Though the petitioner was furnished information about the number of students belonging to

weaker sections and disadvantaged groups of being admitted in the schools, it does not mention as to the detail class wise break up as to whether the schools had been adhering to requirement of providing 25% admission to the weaker sections/disadvantaged group of the society.

4. We understand that this is essentially the responsibility of the State authorities to ensure proper compliance of the provision of the Act by the schools concerned.

5. Accordingly, the State Government will inform this Court as to how they are proceeding to implement the provisions of this Act effectively so that the constitutionally mandated provision for providing free education as translated in the aforesaid parliamentary enactment is properly implemented.

6. Let the State Government file an affidavit as to the modality of implementation of provisions of this Act by the next date.

7. In this regard, we would like to highlight certain provisions of the Right of Children to Free and Compulsory Education Act, 2009 and the Right of Children to Free and Compulsory Education Rules, 2010.

8. Section 35 of the aforesaid Act of 2009, which empowers the State Government/local authority to issue necessary guidelines and directions regarding implementation of the provisions of the Act reads as follows:

“35. Power to issue directions.—(1) The Central Government may issue such guidelines to the appropriate Government or, as the case may be, the local authority, as it deems fit for the purposes of implementation of the provisions of this Act.

(2) The appropriate Government may issue guidelines and give such directions, as it deems fit, to the local authority or the School Management Committee regarding implementation of the provisions of this Act.

(3) The local authority may issue guidelines and give such directions, as it deems fit, to the School Management Committee regarding implementation of the provisions of this Act.”

9. Similarly, Rule 11 of the Right of Children to Free and Compulsory Education Rules, 2010 framed by the Central Government, which was notified on 09.04.2010 provides the details of the responsibilities of the schools and teachers as provided under Part V of the aforesaid Rules.

The aforesaid Rule 11 reads as follows:

“11. Admission of children belong to weaker section and disadvantaged group-(1)

The school referred to in clauses (iii) and (iv) of clause (n) of section 2 shall ensure that children admitted in accordance with clause (c) of sub-section (1) of section 12 shall not be segregated from the other children in the classrooms nor shall their classes be held at places and timings different from the classes held for the other children.

(2) The school referred to in clauses (iii) and (iv) of clause (n) of section 2 shall ensure that children admitted in accordance with clause (c) of sub-section (1) of section 12 shall not be discriminated from the rest of the children in any manner pertaining to entitlements and facilities such as text books, uniforms, library and Information, Communication and Technology (ICT) facilities, extra-curricular and sports.

(3) The area or limits of neighbourhood specified in sub-rule (1) of rule 6 shall apply to admissions made in accordance with clause (c) of sub-section (1) of section 12:

Provided that the school may, for the purposes of filling up the requisite percentage of seats for children referred to in clause (c) sub-section (1) of section 12, extend these areas or limits with the prior approval of the appropriate Government.”

10. Rule 16 of the aforesaid Rules, 2010 provides for withdrawal of recognition of schools in the event the school violates one or more condition for grant of recognition or if the school fails to norms and standards specified in the Schedule after hearing the school.

Rule 16 of the aforesaid Rules reads as follows,

“16. Withdrawal of recognition to school:

(1) Where the District Education Officer (hereinafter in this rule referred to as the said Officer) on his own motion, or on any representation received from any person, has reason to believe, to be recorded in writing, that a school recognised under rule 15, has violated one or more of the conditions for grant of recognition or has failed to fulfill the norms and standards specified in the Schedule, the District Education Officer shall act in the following manner:—

- (a) issue a notice to the school specifying the violations of the condition of grant of recognition and seek its explanation within one month;
- (b) in case the explanation is not found to be satisfactory or no explanation is received within the stipulated time period, the said Officer may cause an inspection of the school, to be conducted by a Committee of three to five members comprising of educationists, civil society representatives, media, and

government representatives, which shall make due inquiry and submit its report, along with its recommendations for continuation of recognition or its withdrawal, to the said Officer;

- (c) on receipt of the report and recommendations of the Committee, the said Officer may pass order for withdrawal of recognition:

Provided that no order for withdrawal of recognition shall be passed by the said Officer without giving the school adequate opportunity of being heard:

Provided further that no such order shall be passed by the said Officer without prior approval of the appropriate Government.

(2) The order of withdrawal of recognition passed by the said Officer shall be operative from the immediately succeeding academic year and shall specify the neighbourhood schools to which the children of that school shall be admitted.”

11. We expect the State authorities to inform this Court as to the proposed course of action adopted or which will be adopted by the State authorities for effective compliance of the provisions of Section 12 of the Act by way of affidavit by the next date.

12. List the matter again on 05.01.2021.

JUDGE

CHIEF JUSTICE (ACTING)

Comparing Assistant