

GAHC010050602023



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

Case No. : PIL/24/2023

DEBARGHA ROY

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM,
DISPUR, PIN- 781005, ASSAM.

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
ELEMENTARY EDUCATION DEPARTMENT
BLOCK-C (GROUND FLOOR)

ASSAM SECRETARIAT
DISPUR

GUWAHATI- 781006.

3:THE SECRETARY TO THE GOVT. OF ASSAM
ELEMENTARY EDUCATION DEPARTMENT
BLOCK-C (GROUND FLOOR)

ASSAM SECRETARIAT
DISPUR

GUWAHATI- 781006.

4:THE DIRECTOR OF ELEMENTARY EDUCATION
DIRECTORATE OF ELEMENTARY EDUCATION

KAHILIPARA
GUWAHATI- 781019.

5:THE DIRECTORATE OF SECONDARY EDUCATION
DIRECTORATE OF SECONDARY EDUCATION

KAHILIPARA
GUWAHATI- 781019.

6:MISSION DIRECTOR
SAMAGRA SIKSHA
ASSAM
KAHILIPARA
GUWAHATI- 781019

Advocate for the Petitioner : MS. D GHOSH

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MR. JUSTICE ROBIN PHUKAN

Date : 10-03-2023

JUDGMENT & ORDER (ORAL)

(AM Bujor Barua, J)

Heard Ms. A Verma, learned counsel assisted by Ms. D Ghosh, learned counsel for the petitioner. Also heard Mr. N Das, learned Government Advocate for the respondent No.1 being the Chief Secretary to the Government of Assam, Ms. K Das, learned counsel for the respondents No.2, 3, 4 and 5 being the authorities under the Elementary Education Department, Government of Assam and Mr. S Bora, learned counsel for the respondent No.6 being the Samagra

Siksha Assam.

2. The petitioner, Debargha Roy has instituted this PIL seeking for a direction to the authorities in the Government of Assam to ensure proper compliance and implementation of the requirement of Section 12(1)(c) of the Right of Children to Free and Compulsory Education Act, 2009 (for short, the Act of 2009), providing for education to the extent of at least 25% of the strength of a class for children belonging to weaker section and disadvantaged group in the neighbourhood of the school and provide free and compulsory elementary education till its completion.

3. The petitioner raises an issue that in many number of unaided, non-minority institutions the requirement of Section 12(1)(c) of the Act of 2009 that 25% of the of the strength of that class be admitted by children belonging to the weaker section and disadvantaged group in the neighbourhood of the school and to provide free and compulsory elementary education till its completion had not been duly complied with.

4. Having considered the various provisions of the Act of 2009 as well as the Right of Children to Free and Compulsory Education Rules, 2010 as framed by the Central Government, as recorded in the order dated 18.11.2020 in PIL No.66/2020, the final order thereof dated 16.09.2021 was passed. In the order dated 16.09.2021, the Court took note that as submitted by the learned Advocate General, Assam, the Government had already issued the necessary office memorandum on 02.09.2021 laying down the detailed guidelines as regards the benefits which will be offered in terms of Section 12(1)(c) of the Act

of 2009. Accordingly, by the order dated 16.09.2021, the PIL was closed as nothing remained for further adjudication, but by providing that if any person has any grievance with the implementation of the policy/guidelines contained in the office memorandum dated 02.09.2021, it will be upon such person to approach the appropriate forum for redressal of the grievance. In this respect, the PIL petitioner states that for the purpose of implementation of the policy/guidelines contained in the office memorandum dated 02.09.2021, the representation dated 27.04.2022 had been made to the Director of Elementary Education, Assam. A further representation dated 02.05.2022 had also been made to the Secretary to the Government of Assam in the Department of Education.

5. This PIL is instituted by the petitioner Debargha Roy raising the issue that although the policy/guidelines have been framed and provided in the office memorandum dated 02.09.2021, but effective implementation of the same had not been made as yet.

6. It has been specifically pointed out that in the policy/guidelines contained in the office memorandum dated 02.09.2021 in Clause 3 of Part B thereof, it has been provided that the State Education Department shall officially announce about the issuance of admission forms under Section 12(1)(c) under the Act of 2009 through websites, regional newspapers and reliable media and that the admission forms can be received free of cost from the respective schools and the filled-in applications is required to be submitted to the respective schools along with requisite testimonials and further that the respective schools will design the application form as per Rules incorporating the following information:

“Name of the Child:

Parental Details including Profession of Parents/Guardian:

DOB of Child:

Aadhaar Number of Child:

Contact Number:

Caste:

Permanent Address:

Present Residence:

Distance from School to residence:

Annual Income of family:

Details of disability, in case of CWSN:

Information of Orphan, HIV affected/infected, Migrated and Street Child, if any:

Bank account number of Child with IFSC:

Bank name and Branch of account referred above:.....”

7. It has also been specifically brought to the notice of the Court that as per the table contained in Clause 11 in Part B of the OM dated 02.09.2021 at Sl.No.3 therein there is a requirement of issuing a notice by the State Education Department and schools announcing the admission under the provisions of Section 12(1)(c) of the Act 2009 and that the tentative date of issuing the notice by the State Education Department and the schools announcing the same would be 17th of March of every year. It is stated that for the educational year

2023-24, as per the office memorandum dated 02.09.2021, there is a requirement of issuing the notice by the State Education Department as well as the respective schools announcing admission under Section 12(1)(c) of the Act of 2009 within 17th March of this year, but inspite of such requirement, the notice has not yet been issued.

8. Apart from the aforesaid two specific grievances being raised, a general grievance is also raised in this PIL that although the guidelines/policy had been issued as per the office memorandum dated 02.09.2021, but the provisions thereof are yet to be implemented by the authorities in the Education Department of the Government of Assam as well as by the authorities under the Samagra Siksha Assam. Mr. S Bora, learned counsel for the Samagra Siksha Assam as well as Ms. K Das, learned counsel for the Elementary Education Department, Government of Assam candidly states that in terms of the order dated 18.11.2020 in PIL No.66/2020 as well as in terms of the office memorandum dated 02.09.2021 issued by the Elementary Education Department Government of Assam, there is a legal requirement on the part of the authorities to do the needful as provided in the policy/guidelines contained in the office memorandum dated 02.09.2021.

9. Mr. N Das, learned counsel representing the Chief Secretary to the Government of Assam also takes the same stand that the Government of Assam also feels that there is a necessity to implement the policy/guidelines contained in the office memorandum dated 02.09.2021.

10. As it is an agreed position of the parties, that there is a requirement to implement the policy/guidelines provided in the office memorandum dated 02.09.2021 as regards the admission benefits in the unaided, non-minority institutions as provided under Section 12(1)(c) of the Act of 2009, we accordingly direct the respondent authorities to do the needful as may be required to implement the policy/guidelines contained in the office memorandum dated 02.09.2021 so that the benefits provided therein are made available to the children belonging to the weaker section and disadvantaged group by availing the benefits of free and compulsory elementary education till its completion, for the academic year 2023-24. Similar direction would also remain for all such subsequent academic years. As there is a specific requirement under Clause 3 of Part B of the office memorandum dated 02.09.2021 for announcing the admission under Section 12(1)(c) of the Act of 2009 through websites, regional newspapers and reliable media to be made by the State Education Department as well as the requirement of issuing notice by the State Education Department and the schools concerned announcing the admission under Section 12(1)(c) of the Act of 2009 on or before 17.03.2023 for the purpose of the academic year 2023-24, we also direct the Elementary Education Department of the Government of Assam through its Secretary to do the needful for officially announcing the issuance of admission form under Section 12(1)(c) through websites, regional newspapers and reliable media on or before 14.03.2023, as well as to issue the notice by the Elementary Education Department announcing the admission under Section 12(1)(c) also on or before 14.03.2023 and further the Elementary Education Department to do the needful to ensure that the respective unaided, non-minority schools are also made to issue the said notice on or before 15.03.2023.

11. It is further provided that in the event, the Elementary Education Department of the Government of Assam does the needful as indicated above, but any such unaided, non-minority educational institutions do not comply with the requirement, appropriate action may be taken as provided under the relevant provisions of the Act of 2009.

12. In view of the above admitted stand of the respective parties, this PIL petition stands disposed of with the aforesaid direction(s).

JUDGE

JUDGE

Comparing Assistant