

(2013) 08 GAU CK 0038

Gauhati High Court

Case No: WP (C) No. 3704 of 2012

Jiabur Rahman

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision: Aug. 21, 2013**Hon'ble Judges:** Hrishikesh Roy, J**Bench:** Single Bench**Advocate:** T. Islam, Ms. F. Ahmed, Ms. S. Begum and Mr. D. Narzary, for the Appellant;
U.K. Goswami, SC, Edu. for Respondents 1 to 5 and Mr. S. Sarma, SC, SSA., for the
Respondent

Judgement

Hrishikesh Roy, J.

Heard Mr. T. Islam, the learned Counsel appearing for the petitioner. Mr. U.K. Goswami, learned Standing Counsel, Education appears for the respondents 1 to 5. The respondent No. 6 is represented by Mr. S. Sarma, learned Standing Counsel, SSA. Although affidavit is filed on his behalf, the respondent No. 7 is not represented. The petitioner and the respondent No. 7 Md. Mainul Islam are claiming legitimacy for their respective schools, which shares a common name i.e. No. 2 Lecharibori Primary School in Mayong Block of Morigaon District. The petitioner challenges the order dated 19.6.2012 (Annexure-2) whereby the DEE, Assam has declared that the school headed by the respondent No. 7 Md. Mainul Islam is the "original" school.

2.1. The petitioner contends that the said finding of the DEE, Assam is perverse and is inconsistent with the report dated 9.5.2011 (Annexure-12) of the B.E.E.O., Mayong; the report dated 7.9.2011 (Annexure-9) of the D.I. of Schools, Morigaon and the report dated 19.9.2011 (Annexure-8) of the DEEO, Morigaon. The BEEO, Morigaon inspected both the schools on 7.5.2011 and declared that the No. 2 Lecharibori Primary School headed by the petitioner Jiabur Rahman is the "old school" with proper school building and furniture whereas the school with the same name headed by the respondent No. 7 Md. Mainul is a temporary slipshod structure

constructed recently. Moreover, the petitioner's school is located in the 1 Bigha land under Dag No. 313 of Patta No. 4 of Lecharibori village of Potoria Mouza and the schools name is mutated against this land in the Revenue records.

2.2. In the next report of the D.I. of Schools given on 7.9.2011 (Annexure-9) also, it was declared that the school headed by the petitioner is the actual school in the real sense.

2.3. In the report of the DEEO, Morigaon given on 19.9.2011 (Annexure-8), it was reflected that although the respondent No. 7 Md. Mainul Islam was earlier serving in the school since 2003, his service was terminated due to absenteeism on 2.1.2010 and the petitioner was inducted in place of the terminated Headmaster.

3. However notwithstanding all the contemporaneous documents and the above report(s) given by the officers at different level in favour of the genuineness of the petitioner's school, the impugned speaking order was passed by the DEE, Assam.

4. Mr. U.K. Goswami, Standing Counsel, Education however submits that an opportunity was afforded to the petitioner and the respondent No. 7 and since they failed to produce any land documents, an adverse inference was drawn against the petitioner's school. But strangely in the counter affidavit filed by the DEE, Assam, it is averred that enquiry report(s) of the DEEO, Morigaon and the contemporaneous reports were taken into account before the impugned order was passed by the Director.

5. In the counter affidavit filed by the respondent No. 7 it is stated that the original school was relocated and is currently running on land donated by one Md. Hasmat Ali. Therefore it is admitted by the respondent No. 7 that his school is not the one operating in the original location.

6. In the above circumstances, it is relevant to consider whether the shifting of the school was done unilaterally by respondent No. 7 without any approval accorded to the relocation or whether the school of the respondent No. 7 is a new establishment. According to the petitioners, when the service of the respondent No. 7 was terminated on 2.1.2010, he opened another school by the same name, by misutilising the records of the old school where he served as the Headmaster till his service was dispensed with. Therefore it was necessary for the Director to take into account as to whether the documents produced by the Headmaster of the relocated school pertain actually to his own school or whether the original school with own land and DISE Code continues to run at its original location. That apart, it was also required to examine as to whether the respondent No. 7 can claim legitimacy to his school on the basis of the documents of the original school, from where he was discharged on 2.1.2010.

7. But on careful perusal of the impugned order passed by the DEE, Assam it appears that he failed to take into account the report(s) dated 9.5.2011 of the DEEO,

Mayong; the report dated 7.9.2011 of the D.I. of Schools, Morigaon and the report dated 19.9.2011 of the DEEO, Morigaon. In all these reports, it was indicated that the No. 2 Lecharibori Primary School continues to function at its original location and this is the school from where the service of the respondent No. 7 was discharged on 2.1.2010.

8. In the above circumstances, I am of the view that the impugned decision dated 19.6.2012 (Annexure-2) of the DEE, Assam is unsustainable and the same is accordingly quashed. But there must be a conclusive finding on the rival claim of the petitioner and the respondent No. 7 since several vital documents were ignored to reach the impugned conclusion. Accordingly the Commissioner & Secretary to the Government of Assam, Department of Elementary Education is directed to re-consider the matter and take a fresh decision as to whether the No. 2 Lecharibori Primary School functioning on its own land under Dag No. 313 of Patta No. 4 of Lecharibori village of Potoria Mouza is the genuine school and whether the relocated school now headed by the respondent No. 7 is entitled to claim any lawful legacy of the original school from where he was discharged. Before a fresh decision is given, hearing should be afforded to all concerned and the Commissioner should also take note of all the contemporaneous documents including the land records and the 3 report(s) given by the BEE, D.I. and DEEO of the concerned area. To facilitate the exercise, the petitioner will furnish this order and all supporting documents and thereafter a decision should be taken on merit expeditiously and preferably within 2 months, after receipt of intimation from the petitioner. The case accordingly stands allowed without any order on cost.