

GAHC010022462018



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

Case No. : WP(C)/653/2018

SCHOOL MANAGING COMMITTEE OF BHERBHERI SIDDIQUIA M.E.
MADRASSA
REP. BY ITS PRESIDENT, AINAL HOQUE CHOUDHURY, S/O- LT HAJI SHIRAJ
ALI, R/O- VILL- CHENIBARI, P.O. BHERBHERI BIL, DIST- DARRANG,
ASSAM

VERSUS

THE STATE OF ASSAM AND 8 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
ELEMENTARY EDUCATION DEPTT., DISPUR, GHY-6

2:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
SECONDARY EDUCATION DEPTT.
DISPUR
GHY-6

3:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY-19

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

5:THE DISTRICT LEVEL COMMITTEE OF AMALGAMATION
REP. BY ITS CHAIRMAN THE ADDL. DEPUTY COMMISSIONER
(EDUCATION)
DARRANG

MANGALDAI
P.O. AND P.S. MANGALDAI
DIST- DARRANG
ASSAM

6:INSPECTOR OF SCHOOLS
DARRANG MANGALDAI
P.O. AND P.S. MANGALDAI
DIST- DARRANG
ASSAM

7:THE BLOCK LEVEL COMMITTEE OF AMALGAMATION
REP. BY ITS CHAIRMAN THE DISTRICT ELEMENTARY EDUCATION
OFFICER
DARRANG MANGALDAI P.O. AND P.S. MANGALDAI
DIST- DARRANG
ASSAM

8:THE BLOCK ELEMENTARY EDUCATION OFFICER
DALGAON
SIYALMARI
P.O. DALGAON
DIST- DARRANG
ASSAM

9:THE HEAD MASTER
CHENIBARI ANCHALIK HIGH SCHOOL
CHENIBARI
P.O. BHERBHERI BIL
DIST- DARRANG
ASSAM
PIN-78419

Advocate for the Petitioner : MR. S ISLAM

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 11.04.2023

Heard Mr. S. Islam, learned counsel for the petitioner as well as Mr. R. Mazumdar, learned standing counsel for the Elementary Education Department, appearing for respondent nos. 1 to 4 and 6 to 9 and Mr. G. Pegu, learned Govt. advocate appearing for respondent no.5.

2. The petitioner is the school Committee of Bherbheri Siddiquia ME Madrassa and it is represented by its President. The said school was established in the year 1969 and was provincialised w.e.f. 01.03.1978.

3. The Secondary Education Department had issued OM No. ASE-481/2016/17 dated 22.09.2016 for amalgamation/ merger of different categories of schools situated in the same campus or nearby area. Pursuant to the said OM dated 22.09.2016, the Commissioner and Secretary to the Govt. of Assam, Secondary Education Department had issued an order No. ASE-1395/2016/Pt-I/71 dated 19.01.2018 by which Chenibari Anchalik High School, Dalgaon, DISE Code: 18080307907 was amalgamated with (1) Bherbheri Siddiqua M.E. Madrassa, Dalgaon, DISE Code: 18080307304, and (2) Bherbher Bil L.P. School, Dalgaon, DISE Code: 18080307301. It was provided that after amalgamation the name of the school shall be Chenibari Anchalik High School and the manner in which the SMC/SMDC would be constituted was also provided.

4. The learned counsel for the petitioner by referring to the contents of

OM dated 22.09.2016 has submitted that the enrolment of students in Bherbheri Siddiquia ME Madrassa at the time of filing of the writ petition was 338 students with 129 students in Class 6, 127 students in Class 7 and 82 students in Class 8. It is submitted that the Madrassa has been running with 6 numbers of teaching staff including the In-charge Headmaster and that the post of Arabic and Hindi teachers were lying vacant. In this context, by referring to clause 10, 11, 12 and 13 of para 3 of OM dated 22.09.2016, it is submitted that as the number of students in the Bherbheri Siddiquia ME Madrassa was 338, the said school could not have been amalgamated with two other schools.

5. The learned counsel for the petitioner also submits that the Madrassa and the LP schools are situated in south side of Bhanga Baruah PWD road and there is a market with almost 200 permanent shops with a footfall of about 2000 persons. Accordingly, it is submitted that the students would face immense difficulty in commuting to the amalgamated school and that the school being near the market area, the atmosphere for education would be vitiated in the amalgamated school. It is submitted that the School Managing Committee by adopting a resolution dated 02.02.2018 had opposed the proposal of the authorities to amalgamate three schools into one. It is submitted that owing to interim order passed on 16.02.2018 in this writ petition, the petitioner is still holding the charge of School Managing Committee.

6. The learned standing counsel for the respondents has referred to the contents of OM dated 22.09.2016 and it is submitted that the authorities have taken a conscious decision through the said OM dated 22.09.2016 that the schools situated in the same campus or in any nearby area "shall" be amalgamated/ merged. It is submitted that by the merger of the three schools,

none of the clauses of the OM dated 22.09.2016 has been violated. It is submitted that as per instructions provided to him, the intention of the authorities in proposing the merger is that the students who gets enrolled in Class 1 of the school could complete his school education till Class 10 in the same school without requiring him to change schools. Hence, it is submitted that except for private interest of the members of the SMC, public interest at large would not be affected.

7. Clause 10, 11, 12 and 13 of para 3 of the OM dated 22.09.2016, are extracted below:

(10) If a ME School has poor enrolment i.e. less than 15 students in each class then the ME School may be merged with the nearby High School.

(11) If two or more UP (ME) Schools are located within the radius of 1 Kilometer then these ME Schools may be merged provided that nos of students do not exceed 40 in each class.

(12) If two or more LP Schools within the radius of ½ Kilometer then these LP Schools may be merged provided that nos of students do not exceed 100 in each school.

(13) Similar criteria shall be considered in case of ME Madrassa, High School and Higher Secondary Madrassa.

8. In the present case in hand, the respondent authorities have amalgamated three schools into one. The Chenibari Anchalik High School, as the name suggests, is a high school. The Bherbheri Siddiquia ME Madrassa is stated to be equivalent to an Upper Primary School and the third school, which is the Bherbheri Bil L.P. School, as the name suggests, is a Lower Primary School. Therefore, this is not a case where two or more schools of same category are

sought to be merged with another and therefore, the order of merger dated 19.01.2018 cannot be said to be in contradiction to clauses 10, 11, 12, and 13 of para 3 of the OM dated 22.09.2016.

9. Insofar as the other concern for students that are expressed to the effect that to travel to school the students would have to cross a market area with lot of shops with high footfall, the Court is not impressed with the said projection of the petitioner because at least one of the three said schools exists in a place where there is a market of about 200 shops with footfall of 2000 as projected. Therefore, if some students can take education in school with such busy area in the neighborhood, the Court does not see any reason why other students would not be able to attend school in similar atmosphere. It is not the case of the petitioner that there was any objection when the school and/or the market were established in the vicinity of each other. The petitioner has not brought the notice of the Court to any law which prevents a school to run if there is a market in the nearby area.

10. Only issue that the Court is concerned with is whether the amalgamation is strictly in accordance with the provisions of hereinbefore referred OM dated 22.09.2016. On said parameters, the Court does not find that the order of amalgamation is contrary to the mandate of OM dated 22.09.2016 and therefore, the challenge by the petitioner to the impugned order of amalgamation dated 19.01.2018 fails. Accordingly, this writ petition stands dismissed.

11. The interim order which was passed on 16.02.2018 restraining the authorities against merger of Bherbheri Bil LP School and Bherbheri Siddiquia ME Madrassa with Chenibari High School is vacated forthwith.

12. The parties are left to bear their own cost.

JUDGE

Comparing Assistant