

GAHC010025782020



IN THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

WRIT APPEAL No.122 of 2021

1. The National Institute for Open Schooling, Formerly National Open School, represented by its Chairman, MHRD, Government of India, Industrial Area, NH-24, Noida, District: Gautam Buddh Nagar, Uttar Pradesh.
2. The Regional Director, National Institute of Open Schooling Building of Assam Publication Board, 1st Floor, Bamunimaidam, Guwahati – 781023.
3. The Assistant Director, National Institute of Open Schooling Building of Assam Publication Board, 1st Floor, Bamunimaidam, Guwahati – 781023.
4. The Section Officer, National Institute of Open Schooling Building of Assam Publication Board, 1st Floor, Bamunimaidam, Guwahati – 781023.

....Appellants

-Versus-

1. Prince Wazim A. Majumdar,
Son of Nurur Rahim Majumdar,
C/o "Noor Manzil", 4, HM Road, Village: Islampur,
Near Pub Guwahati Idgah, Guwahati, Assam –
781007, PS: Paltanbazar, District: Kamrup, Assam.
2. Sonia Shahnaaz Majumdar,
Son of Nurur Rahim Majumdar,
C/o "Noor Manzil", 4, HM Road, Village: Islampur,
Near Pub Guwahati Idgah, Guwahati, Assam –
781007, PS: Paltanbazar, District: Kamrup, Assam.

....Respondents

- B E F O R E -
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE KARDAK ETE

For the Appellants : Mrs. R. Borah, Advocate.
For the Respondents : Mrs. S.B. Choudhury, Advocate.
Date of Judgment & Order : **14th March, 2023.**

JUDGMENT & ORDER (ORAL)

[Sandeep Mehta, C.J.]

This intra-Court writ appeal is directed against the final order dated 25.01.2019 passed by the learned Single Bench accepting WP(C) No.2161/2017 filed by the respondents herein and directing the appellants to reconstruct and issue the Duplicate Certificates of the Secondary Course Examination held by the appellants in the month of April/May, 2008, with proper endorsement. Challenge is also given in this appeal to the judgment & order dated 27.11.2019 whereby, Review Petition No.67/2019 preferred by the appellants was dismissed.

2. Heard Mrs. R. Borah, learned counsel representing the appellants and Mrs. S.B. Choudhury, learned counsel representing the respondent Nos.1 & 2.

3. Mrs. Borah, learned counsel representing the appellants vehemently and fervently submitted that the concession given by the appellants' counsel in the writ Court was owing to an inadvertent error. She urged that the respondents/writ petitioners approached the writ Court with a prayer for issuance of the original Certificate cum mark-sheet for the Secondary Examination held in April/May, 2008 by filing the writ petition as late as in the year 2017. According to Mrs. Borah, it is absolutely unacceptable and unbelievable that the respondents/writ petitioners would have waited for such

a long period without making any effort to procure the original Certificates. It was submitted that the delay in filing the writ petition makes it clear that the prayers made by the respondents/writ petitioners were not bonafide.

4. Mrs. Borah further submitted that the Provisional Certificate and the Provisional result-sheet on which, the respondents/writ petitioners relied upon were, as a matter of fact, not issued by the authority competent to issue such Certificate. It was further contended that the respondents/ writ petitioners could not have appeared in the examinations held in April/May, 2008 because the late fee for this examination forwarded by K.J.P. Synod Sepngi Secondary School, Nongstoin, the Centre through which the respondents/writ petitioners gave the examination, was credited into the account of the appellant National Institute for Open Schooling (NIOS) in February, 2008 and thus, Admit Cards for the said examination could not have been issued to the respondents/writ petitioners because the fee was received after the last date. She further submitted that there is no corresponding record regarding appearance of the respondents/writ petitioners in the Secondary Examination held in April/May, 2008 and hence, the writ Court was not justified in acceding to the prayer made by the respondents/writ petitioners.

5. Per contra, Mrs. S.B. Choudhury, learned counsel representing the respondents drew the Court's attention to the additional affidavit dated 07.11.2022 filed by the respondents/writ petitioners in this appeal and the documents annexed therewith as Annexure-I, Annexure-II and Annexure-III. She particularly emphasized on the document (Annexure-III), which is the Online Admission Status 2009-10 of the respondent/writ petitioner No.1, Prince Wazim A. Majumdar, and urged that the candidate's application for Admission to the Senior Secondary Course was initially deferred on 07.08.2009 on the

ground that the original Secondary Mar-sheet/Pass Certificate was not available, however, subsequently on 07.10.2009, the admission of the said candidate was confirmed. Ms. Choudhury thus, urged that in view of this document, it does not lie in the mouth of the appellants to claim that the respondents/writ petitioners, did not appear and clear the Secondary Examination held in the month of April/May, 2008.

6. We have given our thoughtful consideration to the submissions advanced at Bar and have gone through the impugned judgment and the materials placed on record.

7. At the outset, we may note that when the writ petition was taken up by the learned Single Judge on 25.01.2019, the counsel representing the appellant NIOS, admitted that the original Certificates were in fact not issued to the candidates. It was also admitted that this happened because of mechanical fault in the system. Further, fact remains that the respondents/writ petitioners were admitted to the Senior Secondary Course in the year 2009 and they cleared the same. In view of the document (Annexure-III) referred to (supra), it can safely be concluded that admission into the Senior Secondary Course would not have been confirmed unless, the candidate was found to have cleared the Secondary Examination. In this background, the contentions advanced by the appellants' counsel that the respondents/writ petitioners, as a matter of fact, did not appear in the Secondary Examination held in the month of April/May, 2008, is unacceptable on the face of record.

8. Further contention of Mrs. Borah that the respondents/writ petitioners also deposited the fee for the same Examination to be conducted in the month of October, 2009 and thereafter did not appear in the Examination, rather

fortifies the case of the respondents/ writ petitioners that as the Provisional Certificates were issued to them and since, on the basis of such Certificates, they were admitted into the Senior Secondary Course, there was no reason for them to have appeared in the examination conducted in the month of October, 2009.

9. The reason for delay in filing of the writ petition is also well explained because after the respondents/writ petitioners completed the graduation course and tried to get themselves enrolled as Lawyers, the original Secondary Certificates were asked for whereupon, the exercise in this direction was started. The delay is thus well explained in the opinion of this Court and there was no intentional delay on the part of the respondents in approaching this Court for the relief sought for in the writ petition. The learned Single Bench while deciding the */is*, duly considered the factual matrix of the matter. Rather, the case of the petitioners was not even contested by the appellants. Thus, the direction issued by the learned Single Judge to the appellants vide order dated 25.01.2019 for reconstructing and issuing the Certificate of the Secondary Course to the respondents/writ petitioners does not warrant any interference.

10. The writ appeal lacks merit and is dismissed as such. No costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant