

GAHC010047242018



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

Case No. : WP(C)/1447/2018

BALICHERRA M.E. MADRASSA AND ANR.
REP BY ITS HEADMASTER, KHALIL AHMED L ASKAR, VILL
KANCHANPUR-II, PO-KANCHANPUR, DIST. HAILAKANDI, ASSAM, PIN-
788152

2: KHALIL AHMED LASKAR
S/O LT. ANIS LASKAR
VILL- KANCHANPUR-II
PO-KANCHANPUR
DIST. HAILAKANDI
ASSAM
PIN-78815

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
ELEMENTARY EDUCATION DEPTT., DISPUR, GUWAHATI-6, ASSAM

2:THE DEPUTY SECRETARY TO THE GOVT OF ASSAM
ELEMENTARY EDUCATION DEPARTMENT
DISPUR
GUWAHATI-6
ASSAM

3:THE DIRECTOR OF ELEMENTARY EDUCATION
KAHILIPARA
GUWAHATI-19
ASSAM

4:THE DISTRICT ELEMENTARY EDUCATON OFFICER
HDC HAILAKANDI
PO AND DIST. HAILAKANDI
ASSAM

PIN-788151

5:THE BLOCK ELEMENTARY EDUCATION OFFICER
HAILAKANDI
PO AND PS HAILAKANDI
DIST. HAILAKANDI
ASSAM

6:THE SECRETARY
BALICHERRA M.E. MADRASSA
VILL BORBOND PART-II
PO-BALIURA
DIST. HAILAKANDI
ASSAM
PIN-78816

Advocate for the Petitioner : MR. S B LASKAR

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 12-04-2023

Heard Mr. S.B. Laskar, learned counsel for the petitioner as well as Mr. R. Mazumder, learned standing counsel for the Elementary Education Department appearing for the respondent nos.1 to 5. None appears on call for the respondent no.6 although as per order dated 29.10.2021 passed by the Lawazima Court the notice on the respondent no.6 is deemed to be duly served.

2. The case of the petitioner is that the petitioner no.1, Balicherra ME Madrassa is situated at village Kanchanpur, P.O. Kanchanpur PIN.788152 and it is claimed that the said Madrassa was established on 01.01.1986 and its data is captured in the District Information System for Education (DISE for short) for the year 2008-2009 under Dias code 18230109410. It is projected that the

petitioner no.1 Madrassa is in possession of land measuring 3B covered by 2nd RS Dag nos.648 and 650 under Patta No.178 of Mauza Kanchanpur Part-II vide Sale Deed No.3663 dated 01.12.1997 registered before the Sub-Register, Hailakandi and accordingly, by the order dated 24.12.2013, the Assistant Settlement Officer had issued land possession and mutation certificate in favour of the petitioner no.1 Madrassa. The petitioner no.2 is the Headmaster of the said Madrassa. It is projected that the said Madrassa has employed 9 teaching and non-teaching staff.

3. It is also claimed that the petitioner no.1 Madrassa had received financial assistance from the Govt. of Assam for the year 2010-11. The grievance of the petitioner is that the respondent no.6 is also running a Madrassa with identical name of Balicherra ME Madrassa. However, the same is located at Borbond-II, P.O. Baliura in the district of Hailakandi.

4. The respondent no.6 Madrassa had approached this Court earlier by filing WP(C) 4108/2010 claiming to be the genuine Madrassa entitled to get financial assistance. This Court by order dated 16.08.2012 disposed of the said writ petition by directing the Director of Elementary Education, Assam (respondent no.3) to undertake the said finding exercise as to whether the petitioner no.1 Madrassa or the respondent no.6 Madrassa was granted permission and to pass a speaking order.

5. It is projected that a Committee was constituted comprising of Block Elementary Education Officer, Lala, Block Elementary Education Officer,

Hailakandi and District Elementary Education Officer, Hailakandi to examine the claims of both the Madrassa and give its report. Referring to Annexure-3 to this writ petition, it is submitted that the Inquiry Committee had submitted its report bearing no.DEH-26/BMEM/2013-14/117 dated 02.12.2013, whereby after discussing the issues relating to establishment and the ownership of the land and after verification of the records, gave its opinion to the following effect:-

Opinion:

“In view of the above the Committee after thorough study of the records of both the school and considering the entire aspects extended considered opinion that the Financial Assistance/incentive sanctioned to the school may be released to Balicherra MEM Vill. Kanchanpur, P.O. Kanchanpur LAC-8 Algapur and also step may be taken for provincialization of the school The correction of Address of the school may also be done as Balicherra MEM Vill. Kanchanpur, P.O. Kanchanpur, LAC 8, Algapur (as proposed by the DEEO, Hailakandi and earlier) and the case may kindly be disposed of through a speaking order.”

6. The District Level Scrutiny Committee and District Level Redressal Committee meeting was jointly convened on 20.02.2015 in the office chamber of the Additional Deputy Commissioner (ADM), Hailakandi and the observation recorded in the minutes dated 20.02.2015 is as follows:

“From the above it could be observed that:

1. A venture institution under no circumstances could be recognized without valid registered land, so the logic of claiming, Balicherra ME Madrassa (Borbond) having land records registered on 29/96/2006 after recognition of the school is not sustainable.

2. To get the status of recognition of an institution, the records like possession, Mutation, TraceMap, Chita Copy, Jamabandi, etc of donated land are the prime records. Here the

Balicherra ME Madrassa (Borbond) has obtained all such records just during the year 2010, while Balicherra ME Madrassa (Kanchanpur) has obtained these records in the year 1997. So the claim of Balicherra ME Madrassa (Borbond) is not considerable.

3. The inspection reports of the inspecting officers prior to recognition of the institution as produced by Balicherra ME Madrassa (Borbond); have no traces in the office records. As per record, the inspections reports prior to recognition of the institutions that have been furnished from this office were infavour of the Balicherra ME Madrassa (Kanchanpur).

4. As per office record, the permission etc to Balicherra ME Madrassa was granted to Babicherra ME Madrassa (Kanchanpur) only.

5. Obviously, the recognition etc. could not be awarded to an instituted, which have no valid land records.

6. Most of the records furnished by the HM Balicherra ME Madrassa (Borband) are manipulated and prepared with malafied intention.

7. The inspection report of Balicherra ME Madrassa (Borbond) so produced by the HM of the school claimed to be issued vide this office letter and 25/04/2005 on the basis of which recognition was accorded is a forged one."

7. The minutes of the said meeting was forwarded to the Secretary to the Govt. of Assam, Elementary Education Department as well as to the Director of Elementary Education Assam.

8. The grievance of the petitioner is that the Director of Elementary Education Assam by the impugned order under Memo NoEPD/H/109/2014/224(A) dated 22.04.2016 had taken a decision to the following effect "*in view of the facts stated above and verifying the records submitted during hearing the Balicherra M.E. (Madrassa) P.O.- Baliura, LAC-*

Hailakandi is considered to be genuine."

9. The learned counsel for the petitioner has submitted that by the impugned order the Director of Elementary Education had taken up a contradictory stand than what was contained in the minutes of the District Level Scrutiny Committee and District Level Redressal Committee had jointly on 20.02.2015.

10. Accordingly it is submitted that not only the Director of Elementary Education Assam had held that the respondent no.6 Madrassa was genuine, but by virtue of order of this Court dated 01.11.2022 passed in WP(C) 5293/2020, direction was given to the Director of Elementary Education Assam for release of financial assistance for the period of 2010-2011, 2012-13, 2013-14, 2014-15.

11. On examination of the materials available on record as well as the order dated 01.11.2022 passed in WP(C) 5293/2020, it appears that the impugned order in the writ petition dated 22.04.2016 was the basis of this Court to decide WP(C) 5293/2020. In this writ petition, the respondent no.6 has not contested despite receipt of notice.

12. In this case the petitioner has annexed an inquiry report dated 02.12.2013 (Annexure-3) which was formed by a three member team consisting of (1) Block Elementary Education Officer, Lala, (2) Block Elementary Education Officer, Hailakandi and (3) District Elementary Education Officer, Hailakandi. The said inquiry report was forwarded by the District Elementary Education Officer, Hailakandi to the Director of Education, Assam. There is nothing on record to

show that the attention of the Director of Elementary Education, Assam was brought to the said Enquiry report when the impugned order dated 22.04.2016 was passed. The opinion expressed in the said inquiry report is already extracted herein before. Thereafter, the matter was taken up in a joint meeting of the District Level Scrutiny Committee and District Level Redressal Committee convened on 20.02.2015 and the observation contained in the minutes had already been extracted herein before.

13. It is made to appear that by a forwarding letter bearing no. DEH-II/Proven/UP/2013-14 dated 25.02.2015, the minutes of the joint meeting of District Level Scrutiny Committee and District Level Redressal Committee passed forwarded by the District Elementary Education Officer, Hailakandi to the Director of Education, Assam, but nothing is on record that the minutes of the meeting dated 20.02.2015 was brought to the notice of the Director of Elementary Education, Assam when the impugned order dated 22.04.2016 was passed.

14. In the said forwarding letter there is a reference to WP(C) 4108/2010, T.S. no.2/2013 before the Court of Munsiff No.1, Hailakandi in WP(C) 1318/2014. Therefore, it appears that contrary to the materials available on record, in the impugned letter under Memo no.EPD/H/109/2014/224(A) dated 22.04.2016, the Director of Elementary Education, Assam has recorded that the said authority had perused a report of hearing being conducted by the Deputy Director of Elementary Education, Assam on 09.11.2015 and 21.11.2015 along with relevant records/ documents in the matter. No material has been produced by the Elementary Education Department regarding the circumstances under

which the Deputy Director of Elementary Education, Assam had heard the matter, and whether or not the hereinbefore referred enquiry report and minutes dated 20.02.2015 was placed before the said authority. Therefore, in the said impugned order dated 22.04.2016, no explanation has been tendered/ given as to why the contents of the inquiry report dated 02.12.2013 and the minutes dated 20.02.2015.

15. However, from the contents of the impugned order, it is noticed that the inquiry report forwarded on 02.12.2013 and the minutes dated 20.02.2015 of meeting jointly held by District Level Scrutiny Committee and District Level Redressal Committee has not been discarded.

16. In view of the contradictory findings as referred to herein before, the Court is of the considered opinion that in light of the contents of (1) the inquiry report dated 02.12.2013, (2) the minutes dated 20.02.2015 by the District Level Scrutiny Committee and District Level Redressal Committee, and (3) the contents of the order dated 22.04.2016, the Court is inclined to set aside the impugned order vide memo no.EPD/H/109/2014/224(A) dated 22.04.2016 and direct that the Director of Elementary Education, Assam shall decide the matter relating to claim of the petitioner no.1 Madrassa as well as the respondent no.6 Madrassa afresh by considering the above and/ or any other record, and pass a speaking order thereon.

17. In view of the contradictory stands taken, as indicated herein before the Court further directs that before taking a decision in the matter, the Director of Elementary Education, Assam shall allow the petitioner and the respondent

no.6 an opportunity of personal hearing.

18. It is made clear that this order shall have no bearing on the order dated 01.11.2022 passed in WP(C) 5293/2020 and accordingly, the petitioners may be well advised about the steps required to be taken in this regard.

19. The petitioner shall produce a certified copy of the order along with a copy of the writ petition before the Director of Elementary Education, Assam within a period of 10(ten) days from today and the respondent no.3 shall conduct a fresh inquiry and/or hearing of the matter and dispose of the claim of the petitioner vis-à-vis respondent no.6 within an outer period of 2(two) months from the date of receipt of the certified copy of the order.

JUDGE

Comparing Assistant