

GAHC010120852016



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

Case No. : WP(C)/6645/2016

ABUL KALAM AZAD L.P. SCHOOL and 4 ORS
CHOWAGURI, P.O. BISWANATHGHAT, DIST- SONITPUR, ASSAM, REP. BY
ITS HEAD MASTER CUM SECY., MD. ANOWAR ISLAM, S/O MD. ABDUL
SATTAR, VILL. NIZ BISWANATH, P.O. BISWANATHGHAT, DIST- SONITPUR,
ASSAM, PIN-784177

2: THE MANAGING COMMITTEE
ABUL KALAM AZAD LP SCHOOL
VILL. CHOWAGURI
P.O. BISWANATHGHAT
DIST- SONITPUR
ASSAM
REP. BY ITS PRESIDENT NAMELY MOKBUL AHMED
S/O SAMSUDDIN
VILL. CHOWAGURI
P.O. BISWANATH GHAT
DIST- SONITPUR
ASSAM
PIN-784177

3: MD. ANOWAR ISLAM
S/O ABDUL SATTAR
VILL. NIZ BISWANATH
P.O. BISWANATHGHAT
DIST- SONITPUR
ASSAM

4: HIRANNYA SAIKIA
ASSTT. TEACHER
ABUL KALAM AZAD LP SCHOOL
S/O LT. PADUM SAIKIA
VILL. DAWGAON CHAPORI
P.O. BISWANATH CHARIALI
DIST- SONITPUR

ASSAM
PIN-784177

5: PINKU BORA
ADDL. TEACHER
ABUL KALAM AZAD LP SCHOOL
VILL. GARBHITAR
NABAZAR
S/O HEMA KANTA BORA
P.O. BISWANATH CHARIALI
DIST- SONITPUR
ASSAM
PIN-78417

VERSUS

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

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

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
SONITPUR AT TEZPUR
P.O. TEZPUR
DIST- SONITPUR
ASSAM
PIN-784001

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
SONITPUR AT TEZPUR
P.O. TEZPUR
DIST- SONITPUR
ASSAM
PIN-784001

5:AKHIL DAS
S/O LT. KHOKARAM DAS
VILL. KUMALIA NO.3 MALIMORA
P.O. PANIBHARAL
DIST- SONITPUR
ASSAM
PIN-784177

6:FOISAL HOQUE

S/O GULJAR HUSSAIN
VILL. CHOWAGURI
P.O. BISWANATH GHAT
DIST- SONITPUR
ASSAM
PIN-784177

7:THE CLUSTER RESOURCE CENTRE CO-ORDINATOR
CRCC
BISWANATH BLOCK
P.O. BISWANATH CHARIALI
DIST- SONITPUR
PIN-784177

8:THE ASSAM SARBA SIKSHA ABHIJAN MISSION
REP. BY ITS DIRECTOR
GUWAHATI
KAHILIPARA-19

9:THE DY. INSPECTOR OF SCHOOLS
BISWANATH SUB-DIVISION AT BISWANATH CHARIALI
P.O. BISWANATH CHARIALI
DIST- SONITPUR
ASSAM
PIN-78417

Advocate for the Petitioner : MS.F INTAZ

Advocate for the Respondent :

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

ORDER

Date : 20-03-2023

Heard Mr. M. Hossain, learned counsel for the petitioners as well as Mr. A. Phukan, learned standing counsel for the Elementary Education Department appearing for the respondent nos.1 to 3 and proforma respondent no.9 and Mr. P. Nayak, learned standing counsel for the Sarva Siksha Abhijan appearing for the respondent nos.7 and 8. None appears on call for the respondent nos.4, 5

and 6.

2. In view of the short issue which is raised in this writ petition, this writ petition has been heard at the admission stage.

3. By filing this writ petition under Article 226 of the Constitution of India, the petitioners have prayed for setting aside the impugned order under Memo dated 06.09.2016 and for a direction to hold a fresh inquiry in terms of order dated 02.02.2015 passed in WP(C) 6127/2013.

4. The basic facts are in a very narrow campus. One Akhil Das, respondent no.5 herein had filed WP(C) 621/2012 claiming entitlement to financial assistance to venture LP schools and in the said writ petition it was projected that he was the Headmaster of Abul Kalam Azad Primary School in the district of Sonitpur. In that case, it was projected that Md. Anowar Islam, the petitioner no.3 herein has opened another LP School on 13.06.2011 by the name of Abul Kalam Azad Primary School which was projected to be at a distance of 200 meters away from the school of the respondent no.5. On such facts, this Court by order dated 10.02.2012 by taking note of the disputed questions of fact, disposed of the writ petition by directing the Director of Elementary Education to cause an inquiry and thereafter to pass a speaking order regarding entitlement or otherwise of the financial assistance to the present petitioner no.3 and present respondent no.5 by further directing that the entire exercise should be carried out as expeditiously as possible preferably within 2(two) months and it was made clear that no adverse order be passed against the petitioner no.3 herein without affording him an opportunity of being heard.

5. Thereafter, in terms of the aforesaid order dated 10.02.2012 passed in WP(C) 621/2012, the Director of Elementary Education, Assam after considering the inspection report of the Deputy Inspector of Schools, Biswanath Chariali arrived at a conclusion that the petitioner nos.3, 4 and 5 namely, Md. Anowar Islam, Hirannya Saikia and Pinku Bora are working in the school as Head teacher, 1st Assistant teacher and 2nd Assistant teacher respectively and the said school received financial assistance for the year 2009-10 and it was also mentioned that the school was at a distance of 200 metres away and had no students. Accordingly, the claim of the petitioner no.3 was found to be of original one and the claim of the respondent no.5 for entitlement of financial assistance was not found acceptable.

6. Aggrieved by the refusal of the respondent authorities to give financial assistance to Abul Kalam Azad Primary School, the said school approached the Court by filing a writ petition being WP(C) 6127/2013 and this Court upon hearing the concerned parties including the petitioner no.3 passed the following order:

“The Director shall issue specific direction to the District Elementary Education Officer, Sonitpur to hold an inquiry into the whole dispute to find out as to whether the petitioner is a genuine claimant. The Director shall issue specific direction to the Jurisdictional District Elementary Officer or such other Officer after giving prior notice to both the petitioner and respondent No.5. They shall also be given opportunity to adduce oral and document evidence in support of their the respective claim. The Director shall thereafter pass speaking order relying on the aforesaid materials and shall communicate the same to the petitioner and the respondent No.5. The oral and documentary evidence shall be permitted to be adduced by the parties in their respective behalf and the Director shall pass his speaking

order basing on such materials. The same shall be done within a period of 4 (four) months from the date of receipt of certified copy of this order.

Writ petition stands disposed of."

7. The grievance of the present petitioners is that the Director of Elementary Education, Assam thereafter passed a speaking order dated 06.09.2016 without discussing the oral or documentary evidence in support of their respective claims of the parties.

8. From the impugned order dated 06.09.2016, it appears that the Director of Elementary Education, Assam had considered the following:

"(1) Inquiry report submitted by the Dy. Dee. Assam (B. Bordoloi), dtd. 24.06.2016.

(2) Statement dated 02.05.2016 submitted by DEEO, Sonitpur.

(3) Statement dated 02.05.2016 submitted by BEEEO, Biswanath.

(4) Statement dated 02.05.2016 submitted by President of School Managing Committee of Abdul Kalam Azad L.P. School.

(5) Statement dated 02.05.2016 submitted by the petitioner Sri Akhil Das."

9. From the order dated 02.02.2015 in WP(C) 6127/2013, the direction to the Director was to have the District Elementary Education Officer, Sonitpur to hold an inquiry with specific direction that the jurisdictional District Elementary Officer or such other officer after giving prior notice to both sides and that opportunity should be given to adduce oral and documentary evidence in support of their respective claims.

10. It appears from the order dated 06.09.2016, that the inquiry was

submitted by the Deputy Director of Elementary Education. However, in the order dated 06.09.2016, the Director of Elementary Education, Assam had not made any reference to the documentary and oral evidence of the contestant parties and has observed that the finding in order dated 06.09.2016 is based on the statement and observations and report of the DEEO. Although it is mentioned in the order dated 06.09.2016 that statement was submitted by (1) DEEO, Sonitpur, (2) BEEO, Biswanath, (3) Deputy DEE, Assam, (4) President of School Managing Committee of Abul Kalam Azad LP School and (5) Akhil Das (respondent no.5), but there is no discussion on their statement. It is also not known if the said statement was by way of evidence.

11. Therefore, for the 2nd consecutive trial, the Director of Elementary Education, Assam has failed in his duty to act in accordance with the order dated 10.02.2012 passed by this Court in WP(C) 621/2012 and order dated 02.02.2015 passed in WP(C) 6127/2013 by not granting any opportunity to adduce oral and documentary evidence in support of their respective cases to the contesting parties i.e. the petitioner no.3 and the respondent no.5.

12. The Court has inclined to observe that the Director of Elementary Education, Assam by not considering the oral and documentary evidence of the contesting parties by his order dated 06.09.2016 has made an attempt to overreach the orders of this Court.

13. It is appalling to note that the highest authority in the Elementary Education, Assam has taken a part of ignoring the orders of the Court despite clear indication in both the said orders that notices were to be issued to the

petitioner no.3 and the respondent no.5 and they should be given opportunity to adduce oral and documentary evidence in support of their respective claim and therefore the attempt of the Director of Elementary Education, Assam to overreach the order of the Court is not at all appreciated.

14. Accordingly, the Court has no hesitation to set aside the order under memo no.EPD/COP(C)241/2015/194 dated 06.09.2016.

15. In view of the two consecutive directions issued by the Court, which has not been complied with the Director of Elementary Education, Assam shall now personally take up the proceedings relating to claim of the present petitioners and the respondent no.5 namely, Akhil Das and to hold an inquiry into the dispute regarding the genuineness of the claim to financial assistance.

16. It is expected at this time that the Director of Elementary Education, Assam, while taking up the inquiry would give notice to the respondent no.5, namely, Akhil Das and the said authority shall also grant opportunity to both sides to produce oral and documentary evidence in support of their respective claim and the said authority shall decide the issue within a period of 6(six) weeks from the date of receipt of a certified copy of this order if required by taking day to day hearing.

17. Thereafter the Director of Elementary Education, Assam shall pass a speaking order without being influenced by the previous order being order under memo no.EPD/H/46/2012/334 dated 02.01.2013 and order under memo no.EPD/COP(C)241/2015/194 dated 06.09.2016 or any other statement or

report contained therein.

18. The writ petition stands allowed to the extend as indicated above.

19. Under the said circumstances, the Court imposes cost on the Director of Elementary Education, Assam.

20. The petitioners shall produce a certified copy of this order before the Director of Elementary Education, Assam and shall also provide their e-mail address or mobile number having Whatsapp facility so as to enable the Director of Elementary Education, Assam to provide him information on the date of hearing.

JUDGE

Comparing Assistant