GAHC010170302018

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

Case No. : WP(C)/5261/2018

THE PRESIDENT, SCHOOL MANAGING COMMITTEE OF BARKHOPA M.E. SCHOOL AND ANR.
PIN- 781367, DIST- BAKSA, REP. BY SRI DHARANIDHAR DEKA, S/O- LATE PABITRA DEKA, VILL- GARUA, P.O- BORKHOPA, PIN- 781367, DIST- BAKSA

2: SECRETARY
THE SCHOOL MANAGING COMMITTEE OF BARKHOPA M E SCHOOL
REP. BY SRI NIVA BORO
W/O- SANTI BORO
HEAD MISTRESS I/C OF BARKHOPA ME SCHOOL UNDER BLOCK ELEMENTARY EDUCATION OFFICE
TAMULPUR
DIST- BAKSA
PIN- 78136

VERSUS

THE STATE OF ASSAM AND 9 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM, ELEMENTARY EDUCATION DEPTT, DISPUR, GUWAHATI- 781006

2:THE ADDITIONAL CHIEF SECRETARY
GOVT OF ASSAM
ELEMENTARY EDUCATION DEPTT
DISPUR
GHY- 6

3:THE SECRETARY
GOVT OF ASSAM
ELEMENTARY EDUCATION DEPTT
DISPUR
GUWAHATI- 06

4:THE DIRECTOR

SECONDARY EDUCATION KAHILIPARA
GHY- 19

5:THE DIRECTOR
ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GHY- 19

6:THE DEPUTY SECRETARY
GOVT OF ASSAM
EDUCATION DEPTT
DISPUR
GHY- 06

7:THE SECRETARY
EDUCATION BTAD
KOKRAJHAR
PIN- 783370

8:THE DIRECTOR OF EDUCATION
BTAD
KOKRAJHAR
PIN- 783370

9:THE INSPECTOR OF SCHOOLS
BTAD DISTRICT
BAKSA
PIN- 781371

10:THE DISTRICT ELEMENTARY EDUCATION OFFICER
BTAD DISTRICT
BAKSA
PIN- 78137

Advocate for the Petitioner : MR. R C SAIKIA

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

02.06.2023

Heard Shri RC Saikia, learned counsel for the petitioners. Also heard Ms. N.

Phookan, learned Standing Counsel, Elementary Education Department as well as Shri U. Sarma, learned Standing Counsel, Secondary Education Department and Shri S. Bora, learned Standing Counsel, BTC.

2. Considering the facts and circumstances of the case and the fact that the writ petition is pending since the year 2018 without any affidavit being filed by the contesting respondents, the same is taken up for disposal at the admission stage.

3. The facts projected are that an Office Memorandum was issued by the Education Department on the policy of merger of various Schools. In the instant case, the relevant Clause is Clause 10 which is extracted hereinbelow-

> "*Clause – (10): If a M.E. School has poor enrolment i.e., less than 15 students in each class then the M.E. School may be merged with the nearby High School.*"

4. The petitioners are the Office Bearers of the School Managing Committee of the Barkhopa ME School in the district of Baksa. In terms of the aforesaid policy decision, an order was issued on 19.01.2018 whereby the School of the petitioners along with the Barkhopa High School were sought to be amalgamated with Ahiyabari High School.

5. By drawing the attention of the aforesaid Clause of the Office Memorandum dated 22.09.2016, Shri Saikia, learned counsel for the petitioners has submitted that to amalgamate an ME School there has to be less than 15 numbers of students in each classes and under that condition, the said ME School may be merged with the nearby High School.

6. By referring to the data regarding number of students and staff in the said School which has been annexed as Annexure 3 to the writ petition, Shri Saikia, learned counsel for the petitioners has submitted that each of the Classes have students which is more than the requisite number mentioned in Clause 10. For ready reference, the data regarding the number of students in various classes is extracted hereinbelow-

"*Statement showing of Classwise enrolment of Barkhopa M.E. School.*

1.	*Class (VI)*	*60*
2.	*Class (VII)*	*71*
3.	*Class (VIII)*	*70*

Total = 201"

7. The learned counsel for the petitioners also submits that apart from the fact that the number of students in the concerned school does not justify any action of merger, there is another condition that the High School has to be in the vicinity. It is submitted that the Ahiyabari High School is far away from the School of the petitioners.

8. The learned counsel for the respondents however submit that the impugned notification being an outcome of a policy decision, the same may not be interfered with by this Court.

9. After hearing the parties and on perusal of the materials on record, this Court has come to the conclusion that the projected fact of petitioners have not been controverted by any of the respondents by filing any affidavit and therefore by the doctrine of *non-traverse*, the averments made may be deemed to be correct. Even otherwise, this Court has noted that the data regarding students does not justify merger of the School in question with any High School. The policy decision published vide the Office Memorandum dated 22.09.2016 with regard to the merger of ME School with the nearby High School does not appear to be applicable to the case of the petitioners both on the issue of number of students and the distance factor.

10. Shri Saikia, learned counsel for the petitioners, at this stage, submits that this Court while issuing notice had passed an interim order dated 24.09.2018 which is continuing till date.

11. In view of the above, this Court is of the opinion that the impugned order so far

as it relates to the merger of the school of the petitioners are concerned is liable to be interfered with which is accordingly done. Consequently, the part of the impugned dated 19.01.2018 relating to the Barkhopa ME School is set aside. The writ petition accordingly stands allowed and the interim order is also made absolute.

JUDGE

Comparing Assistant