

GAHC010070082024



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

Case No. : I.A.(Civil)/1052/2024

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
HEALTH and FAMILY WELFARE B DEPTT., DISPUR, GUWAHATI-6.

2: THE JOINT SECRETARY TO THE GOVT. OF ASSAM

HEALTH AND FAMILY WELFARE B DEPTT.
DISPUR
GUWAHATI-6.

3: THE DIRECTOR OF AYUSH
ASSAM

1 NO. BANPHOOL PATH
BELTOLA ROAD
GUWAHATI-781006.

4: THE PRINCIPAL

SWAHID JADAV NATH HOMEOPATHIC MEDICAL COLLEGE and HOSPITAL
GUWAHATI
PANJABARI
GUWAHATI-37
ASSAM

VERSUS

RAFIQUL ISLAM
S/O. LT. ABU BAKKAR SIDDIQUE, R/O. ROOPNAGAR, JHOGRAPAR PART-III,
NEAR CIVIL HOSPITAL, DHUBRI, P.S. and DIST. DHUBRI, ASSAM.

Advocate for the Petitioner : MR. D P BORAH

Advocate for the Respondent : MR M AHMED

Linked Case : WP(C)/4080/2017

DR. ALOKESH CH. ROY
S/O LATE NALINI KANTA ROY
LECTURER S.J.N. HOMEOPATHIC MEDICAL COLLEGE and HOSPITAL
PANJABARI
GUWAHATI-37
R/O WARD NO. 1
SARAT ROY LANE
PO-GAURIPUR
DIST. DHUBRI ASSAM
PIN-783331

VERSUS

THE STATE OF ASSAM
REP. BY ITS COMMISSIONER SECRETARY TO THE GOVT. OF ASSAM
HEALTH and FAMILY WELFARE DEPTT.
DISPUR
GHY-6

2:THE DIRECTOR OF AYUSH
ASSAM
BANPHOOL NAGAR PATH
HOUSE NO. 1
1ST FLOOR
DISPUR
GUWAHATI-6
3:THE PRINCIPAL

S.J.N. HOMEOPATHIC MEDICAL COLLEGE and HOSPITAL
PANJABARI
GUWAHATI-37
4:ROFIQUL ISLAM
S/O UNKNOWN
LECTURER
ASSAM HOMEOPATHIC MEDICAL COLLEGE and HOSPITAL
NAGAON AT HAIBORGAON

Advocate for : MR.M J BARUA

Advocate for : MR.J ALAM (R-3) appearing for THE STATE OF ASSAM

Linked Case : WP(C)/7691/2016

RAFIQUL ISLAM
S/O. LT. ABU BAKKAR SIDDIQUE
R/O. ROOPNAGAR
JHOGRAPAR PART-III
NEAR CIVIL HOSPITAL
DHUBRI
P.S. and DIST. DHUBRI
ASSAM.

VERSUS

THE STATE OF ASSAM and 3 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HEALTH and FAMILY WELFARE B DEPTT.
DISPUR
GUWAHATI-6.

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1 NO. BANPHOOL PATH
BELTOLA ROAD
GUWAHATI-781006.
4:THE PRINCIPAL

SWAHID JADAV NATH HOMEOPATHIC MEDICAL COLLEGE and HOSPITAL
GUWAHATI
PANJABARI
GUWAHATI-37
ASSAM.

Advocate for : MR.S RAHMAN
Advocate for : MR.D P BORAHSC
HEALTH appearing for THE STATE OF ASSAM and 3 ORS.

**BEFORE
HONOURABLE MR. JUSTICE K. SEMA**

ORDER

23.04.2024

Heard Mr. D.P. Borah, learned Standing Counsel, Health Department, Assam, for the applicants and Mr. M.J. Baruah, learned counsel for the petitioner in WP(C)/4080/2017.

None appears for the petitioner in WP(C)/7691/2016.

2. The present application has been filed by the State applicant recalling the ex-parte Order dated 18.03.2024, passed by this Court in WP(C)/7691/2016 and WP(C)/4080/2017 imposing a cost of Rs. 10,000/- (Rupees Ten Thousand) on the Health Department, which was to be deposited within a period of 10 (ten) days from the date of the Order and to be released to the petitioner under proper receipt.

3. Mr. D.P. Borah, learned Standing Counsel, Health Department, submits that on 18.03.2024, WP(C)/7691/2016 and WP(C)/4080/2017 was listed before Court No. 16 as item Nos. 9 & 10. However, the conducting counsel for the respondents could not attend the Court as he had to go to Tezpur due to sudden demise of one of his family members. Accordingly, Shri D. Upamanyu, learned Standing Counsel, Health & Family Welfare Department, was asked to adjourn the matter on behalf of the conducting counsel, Shri D.P. Borah. However, when the said matter was called, Mr. D. Upamanyu, the entrusted counsel was on his legs in Court No. 8, and therefore, he could not immediately attend Court No. 16 to mention item Nos. 9 & 10, i.e. WP(C)/7691/2016 and WP(C)/4080/2017, and it was in that circumstances that the ex-parte Order dated 18.03.2024 was

passed by the Hon'ble Court imposing a cost of Rs. 10,000/- (Rupees Ten Thousand) on the Health Department for not filing the affidavit in the said cases in terms of the Order dated 19.02.2018, passed by this Court. Mr. D.P. Borah, learned Standing Counsel, Health Department, further submits that earlier, on 17.11.2020, this Court had directed the learned Standing Counsel to obtain instructions as the transfer orders under challenge in the two writ petitions, WP(C)/7691/2016 and WP(C)/4080/2017 were of the year 2016 and 2017. In terms of the Order dated 17.11.2020, passed by this Court, necessary instructions were sought for from the Department and pursuant to which, the Department had furnished the Notification dated 29.11.2022, issued by the Government of Assam, Medical Education & Research Department, Dispur, Guwahati, *inter alia* providing that the three numbers of Homeopathic Medical College & Hospital of Assam, namely:-

- (i) Swahid Jadav Nath Homeopathic Medical College & Hospital, Guwahati,
 - (ii) Assam Homeopathic Medical College & Hospital, Nagaon, and
 - (iii) Dr. J.K. Saikia Homeopathic Medical College & Hospital, Jorhat,
- shall be amalgamated into one single Homeopathic College in Guwahati, i.e. "Swahid Jadav Nath Homeopathic Medical College & Hospital, Guwahati".

4. Mr. D.P. Borah, learned Standing Counsel, Health Department, accordingly submits that in terms of the Notification dated 29.11.2022, both the writ petitions filed by the petitioners, i.e. WP(C)/7691/2016 and WP(C)/4080/2017 had also become infructuous. Mr. D.P. Borah, however, submits that in view of the reasons stated in the preceding paragraph the

Notification dated 29.11.2022 could not be placed before the Court on 18.03.2024 when both WP(C)/7691/2016 and WP(C)/4080/2017 were listed before the Court and due to which the Order dated 18.03.2024 was passed by the Court imposing a cost of Rs. 10,000/- (Rupees Ten Thousand) on the Health Department.

5. I have heard Mr. D.P. Borah, learned Standing Counsel, Health Department, Assam.

6. This Court has also perused the Notification dated 29.11.2022, issued by the Government of Assam, Medical Education & Research Department, Dispur, Guwahati.

7. In view of the submissions made by the learned counsel for the applicant, this Court is of the view that the learned Standing Counsel was sufficiently prevented from attending the Court on 18.03.2024 when WP(C)/7691/2016 and WP(C)/4080/2017 were listed before the Court. Even otherwise, a perusal of the Notification dated 29.11.2022 will reveal that the cause of action in WP(C)/7691/2016 and WP(C)/4080/2017, in the considered opinion of this Court, no longer survives against the respondents.

8. In view of the observations made above, this Court accordingly recalls the Order dated 18.03.2024, passed in WP(C)/7691/2016 and WP(C)/4080/2017 imposing a cost of Rs. 10,000/- (Rupees Ten Thousand) on the Health Department.

9. The application accordingly stands disposed.

JUDGE

Comparing Assistant