

GAHC010234462017



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

Case No. : WP(C)/2006/2017

MATIOR RAHMAN and 26 ORS.

VERSUS

THE STATE OF ASSAM and 13 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
EDUCATION ELEMENTARY DEPARTMENT, DISPUR, GUWAHATI - 781006.

Advocate for the Petitioner : MR.M CHANDA
Advocate for the Respondent : MS.H TERANGPI

Linked Case : I.A.(Civil)/1522/2017

MATIOR RAHMAN and 26 ORS.

VERSUS

THE STATE OF ASSAM and 13 ORS.

Advocate for : MR.S CHOUDHURY
Advocate for : C.G.C. appearing for THE STATE OF ASSAM and 13 ORS.

Linked Case : I.A.(Civil)/20/2018

MATIOR RAHMAN
PERMANENT BONAFIDE RESIDENTS OF CHEPTI
RANGIA IN THE DIST. OF KAMRUP (R)
ASSAM).

2: HEMANTA MAZUMDAR
GUARDIAN/ RHPS
PERMANENT BONAFIDE RESIDENTS OF CHEPTI
RANGIA IN THE DIST. OF KAMRUP (R)

ASSAM

3: PRAMILA DAS
TEACHER/RHPS
PERMANENT BONAFIDE RESIDENTS OF CHEPTI
RANGIA IN THE DIST. OF KAMRUP (R)
ASSAM

4: VIJAY SHANKAR SINGH
TEACHER/ RHPS
PERMANENT BONAFIDE RESIDENTS OF CHEPTI
RANGIA IN THE DIST. OF KAMRUP (R)
ASSAM

5: TUTUMAI CHOUDHURY
TEACHER/RHPS
PERMANENT BONAFIDE RESIDENTS OF CHEPTI
RANGIA IN THE DIST. OF KAMRUP (R)
ASSAM

6: SYEDA NERISA YASMIN
TEACHER/RHPS
PERMANENT BONAFIDE RESIDENTS OF CHEPTI
RANGIA IN THE DIST. OF KAMRUP (R)
ASSAM

7: SYEDA SHAHIN SHAHNAZ
TEACHER / RHPS
PERMANENT BONAFIDE RESIDENTS OF CHEPTI
RANGIA IN THE DIST. OF KAMRUP (R)
ASSAM

8: BHANITA DEKA
TEACHER/ RHPS PERMANENT BONAFIDE RESIDENTS OF CHEPTI
RANGIA IN THE DIST. OF KAMRUP (R)
ASSAM

9: PRADIP DAS
GUARDIAN/ RHPS PERMANENT BONAFIDE RESIDENTS OF CHEPTI
RANGIA IN THE DIST. OF KAMRUP (R)
ASSAM

10: NAMITA DAS
TEACHER/ RHPS PERMANENT BONAFIDE RESIDENTS OF CHEPTI
RANGIA IN THE DIST. OF KAMRUP (R)
ASSAM

11: POMPI DEKA

TEACHER/ RHPS PERMANENT BONAFIDE RESIDENTS OF CHEPTI
RANGIA IN THE DIST. OF KAMRUP (R)
ASSAM

12: DEEPA DEKA
TEACHER/ RHPS PERMANENT BONAFIDE RESIDENTS OF CHEPTI
RANGIA IN THE DIST. OF KAMRUP (R)
ASSAM

13: MIRA DAS
NON TEACHING STAFF/RHPS
PERMANENT BONAFIDE RESIDENTS OF CHEPTI
RANGIA IN THE DIST. OF KAMRUP (R)
ASSAM

14: RENU DAS
NON TEACHING STAFF/ RHPS
PERMANENT BONAFIDE RESIDENTS OF CHEPTI
RANGIA IN THE DIST. OF KAMRUP (R)
ASSAM

15: PUTULI DAS
NON TEACHING STAFF/ RHPS
PERMANENT BONAFIDE RESIDENTS OF CHEPTI
RANGIA IN THE DIST. OF KAMRUP (R)
ASSAM

16: BISWAJIT DEKA
TEACHER/ RHPS PERMANENT BONAFIDE RESIDENTS OF CHEPTI
RANGIA IN THE DIST. OF KAMRUP (R)
ASSAM

17: PURNIMA DEKA
TEACHER/ RHPS PERMANENT BONAFIDE RESIDENTS OF CHEPTI
RANGIA IN THE DIST. OF KAMRUP (R)
ASSAM

18: RATUL CHANDRA NATH
TEACHER/ RHPS PERMANENT BONAFIDE RESIDENTS OF CHEPTI
RANGIA IN THE DIST. OF KAMRUP (R)
ASSAM

19: JYOTSHNA DEVI
TEACHER/ RHPS PERMANENT BONAFIDE RESIDENTS OF CHEPTI
RANGIA IN THE DIST. OF KAMRUP (R)
ASSAM

20: TARALI DAS

NON TEACHING STAFF/RHPS
PERMANENT BONAFIDE RESIDENTS OF CHEPTI
RANGIA IN THE DIST. OF KAMRUP (R)
ASSAM

21: SURJYA KUMAR DEKA
TEACHER/ RHPS PERMANENT BONAFIDE RESIDENTS OF CHEPTI
RANGIA IN THE DIST. OF KAMRUP (R)
ASSAM

22: BIREN CHANDRA DAS
NON TEACHING STAFF/ RHPS
PERMANENT BONAFIDE RESIDENTS OF CHEPTI
RANGIA IN THE DIST. OF KAMRUP (R)
ASSAM

23: KUSUM CHETRY
NON TEACHING STAFF/ RHPS
PERMANENT BONAFIDE RESIDENTS OF CHEPTI
RANGIA IN THE DIST. OF KAMRUP (R)
ASSAM

24: SAHID ALI
NON TEACHING STAFF/ RHPS
PERMANENT BONAFIDE RESIDENTS OF CHEPTI
RANGIA IN THE DIST. OF KAMRUP (R)
ASSAM

25: BINITA DAS
NON TEACHING STAFF/ RHPS
PERMANENT BONAFIDE RESIDENTS OF CHEPTI
RANGIA IN THE DIST. OF KAMRUP (R)
ASSAM

26: PUJA JAISWAL
TEACHER/ RHPS
PERMANENT BONAFIDE RESIDENTS OF CHEPTI
RANGIA IN THE DIST. OF KAMRUP (R)
ASSAM

27: JANU THAPA
NON TEACHING STAFF/ RHPS
PERMANENT BONAFIDE RESIDENTS OF CHEPTI
RANGIA IN THE DIST. OF KAMRUP (R)
ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
EDUCATION (ELEMENTARY) DEPARTMENT
DISPUR
GUWAHATI 781006.

2:THE DIRECTOR OF ELEMENTARY EDUCATION
GOVT. OF ASSAM
KAHILIPARA
GUWAHATI-781011.

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
KAMRUP (RURAL)
AMINGAON
GUWAHATI-781031.

4:THE BLOCK ELEMENTARY EDUCATION OFFICER
RANGIA
KAMRUP(R)
ASSAM

5:THE DEPUTY COMMISSIONER
KAMRUP(R) AMINGAON
GUWAHATI-781031

6:THE SUB DIVISIONAL OFFICER (CIVIL)
RANGIYA
KAMRUP (R)
ASSAM.

7:THE UNION OF INDIA
REP. BY THE SECY. TO THE GOVT. OF INDIA
MINISTRY OF DEFENSE
NEW DELHI- 110001.

8:THE CHAIRMAN/PRESIDENT
SCHOOL MANAGEMENT COMMITTEE
RED HORNS PUBLIC SCHOOL
CHEPTI
RANGIA -781354
DIST - KAMRUP R ASSAM

9:THE G.O.C.
UMROI CANTONMENT
21 MOUNTAIN DIVISION
MEGHALAYA
C/O- 99 APO.

10:THE STATE BANK OF INDIA
RANGIA BRANCH RANGIA
DIST.- KAMRUP (R)
ASSAM.

11:THE BRIGADIER
HQ 107 MOUNTAIN BRIGADE
21 MOUNTAIN DIVISION
RANGIA
C/O- 99 APO.

12:THE GOC
HQ EASTERN COMMAND
KOLKATA- 700021.

Advocate for : MR. M CHANDA
Advocate for : SC
EDU appearing for THE STATE OF ASSAM

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 11.01.2024

Heard Mr. Bijon Ch. Das, learned senior counsel, assisted by Mr. S. Choudhury, learned counsel, appearing on behalf of the petitioners. Also heard Mr. P. K. Borah, learned standing counsel, Elementary Education Department, appearing on behalf of all the respondents.

2. The petitioners have instituted the present proceedings, assailing the action on the part of the Respondents No. 10, 13 and 14, in arriving at a decision to close down the school named named "Red Horns Public School" managed by the 21st Mountain Division of the Indian Army at Rangia.

3. The requisite facts for adjudication of the issues as arising in the present proceedings, may be noticed as under:

The "Red Horns Public School" was established on 01.01.1988 as "Red Horns Primary School" in the Rangia military station primarily for imparting elementary and primary education to the wards of the army personnel and their families in the station due to lack of educational facilities and the then prevailing intense counter insurgency/terrorism in Lower Assam. In the year 1993, the management of the school was taken-over by 21st Mountain Division, Rangia, and the school was renamed as "Red Horns Public School". The said school was a no loss, no profit institution with no funding either from the Central Government or the State Government. On 30.10.2014, the District Elementary Education Officer(DEEO), Kamrup, granted recognition to the said school under the provisions of Rule 11(4) of the Right of Children to Free and Compulsory Education Rules, 2011, for a period of 3 years w.e.f. 30.10.2014 till 30.10.2017, and the said school was required to be run as a private institution. The said school, on 04.04.2012, was also granted permission by the Government in the Elementary Education Department, Assam, under the provisions of the "Assam Non-Government Educational Institution (Regulation and Management) Act, 2006", and "Assam Non-Government Educational Institution(Regulation and Management) Rules, 2007".

In the year 2017, a decision was arrived at by the management of the school to close down the school and accordingly, a notice came to be issued on 01.03.2017 informing all concerned that the school would stand closed down

w.e.f. 01.04.2017 and accordingly, the Transfer Certificates of the students studying in the said school was to be taken by the parents/guardians before 31.03.2017. The said decision to close down the school was contested by the parents/guardians of the students studying in the said school as well as the public of the area where the school was situated. The objections as raised in the matter, led the Commissioner and Secretary to the Government of Assam, Elementary Education Department, to issue a communication, dated 27.03.2017, requesting the management of the said school to keep the school running till alternative arrangements are made for resolving the situation which was then prevailing in the area.

4. It is to be noted that inspite of the said decision, the school was closed down on 01.04.2017 and the school remained closed till 28.01.2018. Thereafter, at the initiative of the parents/ guardians as well as the public of the area, the school was reopened w.e.f. 06.02.2018, in a rented accommodation nearby to the original location of the school.

5. The present proceedings were initiated by the parents/guardians of the students studying in the said school requiring a direction upon the army authorities to permit the school to function from its earlier location i.e. within the Headquarters of the 21st Mountain Division of the Indian Army at Rangia.

6. In view of the said decision as coming on record, this Court had required the Director, Elementary Education, Assam, to place on record, the stand of the Government in the matter and accordingly, Mr. Borah, learned standing counsel,

Elementary Education Department, had placed on record, a communication, dated 10.01.2024, wherein, it has been, *inter alia*, stated that after the school had remained closed till 28.01.2018, the school was reopened on 06.02.2018, in a rented accommodation nearby to the original location of the school. It was contended that as the original school was no longer in existence and there being a change in the ownership of the school, fresh permission and registration for the said school was required to be obtained by the present management of the school in terms of the provisions of the said Act of 2006 and the Rules thereof of 2007. The said being a development taking place in the matter after the institution of the proceedings and having noticed that the original school operating within the campus of the army authorities no longer being in existence and the students of the said school having been accommodated in a new school established by the parents/guardians along with the local public of the area; the other facts as existing in the matter, is not being alluded to in the present proceedings.

7. In view of the said developments as taking place in the matter; this Court is not called upon to issue any direction upon the army authorities to re-establish the said school within its campus and to allow it to function therefrom as it was so functioning prior to 01.04.2017 and accordingly, the said prayer made in the writ petition by the petitioners, stands rejected.

8. The communication of the Director, Elementary Education Department, Assam, dated 10.01.2024, having brought on record that the present school is under a new management and for all intent and purpose, is a new school; this

Court is of the considered view that the management of the present school is now required to obtain necessary permission and registration under the provisions of the said Act of 2006 and the Rules thereof of 2007 and accordingly, the management of the school shall submit requisite applications in this connection before the concerned authority along with all requisite particulars.

9. Given the background under which the present school was set up and was being operated, after the school was closed down at its original site; it is provided that in the event of any such application for registration of the said school and for grant of permission of the school under the provisions of the said Act of 2006 and the Rules thereof of 2007, is made by the management of the present school, the departmental authorities shall consider the same sympathetically and grant requisite permission/ recognition to the said school under the provisions of the said Act of 2006 and the Rules thereof of 2007.

10. It is further provided that in the event, any of the eligibility criteria as mandated under the provisions of the said Act of 2006 and the Rules thereof of 2007 for grant of such permission/recognition is not met by the school, in question; the said school shall not be denied the requisite permission/ recognition but the departmental authorities shall while granting such permission/recognition provisionally, shall grant adequate time to the management of the school, to meet such deficient eligibility criteria(s).

11. In the writ petition, a further prayer has been made that certain amount pertaining to the school in question while it was functioning within the campus of the 21st Mountain Division, was kept in a SBI account opened in respect of the said school and the present management although inheriting the said school in the manner indicated hereinabove, is not able to access the said account and operate the same.

12. In view of the said position, it is provided that the present management of the school, in question, may approach the authorities under whose control the said account of the school is presently being operated, praying for release of the amount of the school as available therein, to the present management by demonstrating that the present management had infact inherited the earlier school i.e. Red Horns Public School.

13. On receipt of such application, the authority under whom the said account is presently under control, shall consider the same and inform the present management of the school of its decision in the matter. In the event, the authority under whom the said account of the school is presently under control, does not favourably respond to the request as made by the present management of the school, the present management of the school shall be at liberty to institute appropriate proceedings before a competent Court of civil jurisdiction for redressal of their grievances in having access to the said account of the school.

14. With the above observations and directions, this writ petition stands disposed of. However, there shall be no order as to costs.

JUDGE

Comparing Assistant