
(2023) 04 GAU CK 0009

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 2282 Of 2021, I.A.(Civil) No. 1294 Of 2022

Gunaipani M E Madrassa And 3 Ors

APPELLANT

Vs

State Of Assam And 8 Ors

RESPONDENT

Date of Decision : 05-04-2023

Acts Referred:

Citation : (2023) 04 GAU CK 0009

Hon'ble Judges : Michael Zothankhuma, J

Bench : Single Bench

Advocate : M U Mahmud

Final Decision : Dismissed

Judgement

1. Heard Mr. M.U. Mahmud, learned counsel for the petitioners. Also heard Mr. D.P. Chaliha, learned senior counsel assisted by Ms. M. Roy, learned counsel for the respondent Nos. 7, 8 & 9 and Mr. G. Pegu, learned counsel for the State respondents.

2. The dispute between the writ petitioner No. 2, Abul Hossain and the respondent Nos. 7, 8 & 9, is as to which of the two schools would be the original Gunaipani M.E. Madrassa. The Gunaipani M.E. Madrassa was established on 10.09.1994. There is a dispute with regard to whether the faction led by the petitioner No. 2 Abul Hossain and the other faction led by the respondent No. 7, Chan Mia, are running the original Gunaipani M.E. Madrassa.

3. The facts in brief is that the Gunaipani M.E. Madrassa run by Chan Mia was selected as the appropriate school to receive financial assistance from the State Government during the session 2010-2011.

4. Being aggrieved, the petitioner No. 2 filed WP(C) No. 805/2011, stating that the Gunaipani M.E. Madrassa run by the petitioner No. 2 should have been the appropriate Madrassa to receive the financial assistance and not the Madrassa run by Chan Mia.

5. This Court, vide order dated 24.10.2011 dismissed WP(C) No. 805/2011. However, it gave liberty to the petitioners to take recourse to appropriate provisions of law, to remedy it's grievance regarding the question whether the petitioner No. 2's Madrassa is the appropriate Madrassa to receive financial assistance. As the question required taking of evidence and making of a enquiry, this Court held that the remedy of the petitioner No. 2 lay in instituting an appropriate suit for declaration and if required, for consequential relief of injunction. This Court thus held that the Writ Court could not determine disputed questions of fact.

6. Due to the dispute between the parties, complaints were filed. The Joint Secretary to the Government of Assam, Secondary Education Department issued an Inquiry Report dated 15.05.2014, holding that as per his opinion, the Gunaipani M.E. Madrassa headed by the petitioner No. 2 was the original and genuine Madrassa and as such, Government assistance as per Government norms, should be provided to the Madrassa run by the petitioner No. 2.

7. Subsequent to the above facts, the Cluster Resource Centre, Chirakuti wrote a letter dated 26.06.2014 to the District Elementary Education Officer/District Mission Co-ordinator, SSA, Dhubri stating that it had come to his knowledge that the Madrassa run by the petitioner No. 2 Abul Hossain was a fake school, which has not seen any student or staff and that the school was not functioning. On the other hand, the Madrassa run by Chan Mia was the original and genuine school.

8. The Gunaipani M.E. Madrassa run by Chan Mia thereafter filed WP(C) No.2849/2014 before this Court, praying for release of financial assistance sanctioned in the name of Gunaipani M.E. Madrassa for the year 2014-2015. This Court was also informed of the Inquiry Report dated 15.05.2014 passed by the Joint Secretary to the Government of Assam, Secondary Education Department and also the letter dated 26.06.2014 of the Cluster Resource Centre, Chirakuti. The Gunaipani M.E. Madrassa run by Chan Mia also filed I.A. No. 415/2015.

I.A. No. 415/2015 was disposed of on the basis of the Order dated 27.07.2015, by which the Secretary to the Government of Assam, Secondary Education Department was directed to examine the claims and counter-claims of the petitioner No. 2 and the respondent No. 7, in the light of the contradicting findings made by the Joint Secretary, Secondary Education Department in his Inquiry Report dated 15.05.2014, vis-a-vis the Cluster Resource Centre, Chirakuti and the BEEO, South Salmara letters dated 26.06.2014 and 24.10.2014. WP(C) No. 2849/2014, was also disposed off in view of the Order dated 27.07.2015 passed in I.A. No. 415/2015.

9. In pursuant to the Order dated 27.07.2015 passed by this Court in I.A. No. 415/2015 arising out of WP(C) No. 2849/2014, the Commissioner & Secretary to the Government of Assam, Elementary Education Department issued Order dated 06.12.2017, holding that the Gunaipani M.E. Madrassa represented by the respondent No. 7 was found to be genuine and eligible for financial assistance

and other benefits provided to Non-Government Educational Institutions.

10. Being aggrieved by the Order dated 06.12.2017 passed by Commissioner & Secretary to the Government of Assam, Elementary Education Department, the petitioner No. 2 filed WP(C) No. 173/2018. WP(C) No. 173/2018 was disposed of vide Order dated 22.11.2019, by setting aside the Order dated 06.12.2017 issued by the Commissioner & Secretary to the Government of Assam, Elementary Education Department and directing the said authority to re-consider the matter and take a fresh decision, with regard to whether the Madrassa run by the petitioner No. 2 or the respondent No. 7 was the original and genuine Madrassa.

11. In compliance with the Order dated 22.11.2019 passed in WP(C) No. 173/2018, the Deputy Secretary, Elementary Education Department has issued the Inquiry Report dated NIL, which is annexed as Annexure-A to the affidavit-in-opposition filed by the respondent Nos. 7, 8 & 9, wherein, it has been recorded that the Madrassa run by Chan Mia (respondent No. 7) is the original school.

12. Mr. M.U. Mahmud, learned counsel for the petitioners submits that Inquiry Report dated NIL, which is annexed as Annexure-A to the affidavit-in-opposition filed by the respondent Nos. 7 to 9 has not been furnished to the petitioners. He also submits that the impugned Inquiry Report dated NIL has misinterpreted facts and not considered vital issues, which were to be considered. He accordingly submits that the provincialization Order dated 04.02.2021 issued in favour of the respondent Nos. 7 to 9 should be cancelled and the post to which the petitioners have been appointed should be provincialized.

13. Mr. D.P. Chaliha, learned senior counsel for the respondent Nos. 7 to 9 submits that the impugned Inquiry Report dated NIL had been made on the basis of the Order dated 22.11.2019 passed in WP(C) No. 173/2018, which had been filed by the petitioners. As the impugned Inquiry Report dated NIL has been made with regard to facts, the petitioner would have to approach the Civil Court, if he was aggrieved with the decision made in the Inquiry Report.

14. Mr. G. Pegu, learned counsel for the State respondents submits that the impugned Inquiry Report dated NIL clearly shows that the Madrassa run by the respondent No. 7 is the original school and as such, the writ petition should be dismissed.

15. I have heard the learned counsels for the parties.

16. As can be seen from the foregoing paragraphs, the issue as to which of the 2 (two) schools was the original Gunaipani M.E. Madrassa had been subjected to various inquiries. The first Inquiry Report was made in favour of the petitioners by the Joint Secretary to the Government of Assam, Elementary Education Department, vide his Inquiry Report dated 15.05.2014. On the other hand, the following reports were made in favour of the respondent Nos. 7 to 9, which are as follows:-

1. Letter dated 26.06.2014 issued by the Cluster Resource Centre, Chirakuti.
2. The Order dated 06.12.2017 issued by the Commissioner & Secretary to the Government of Assam, Elementary Education Department.
3. The Inquiry Report issued by the Deputy Secretary, Elementary Education Department.
17. The Deputy Secretary, Elementary Education Department had been appointed to conduct the inquiry as to who was running the genuine M.E. Madrassa, vide Office Order dated 18.12.2022 issued by the Secretary to the Government of Assam, Elementary Education Department, which was in turn made in pursuance to the Order dated 22.11.2019 passed in WP(C) No. 173/2018.
18. On the orders of this Court, Mr. G. Pegu, learned counsel for the State respondents has produced the original records and on perusal of the same, it is seen that the Inquiry Report made by the Deputy Secretary, Elementary Education Department has come to a finding that the Gunaipani M.E. Madrassa run by the respondent No. 7 is the original school. The finding made by the Deputy Secretary, Elementary Education Department is reproduced below as follows:-

"From all these and above, it can be ascertained that the Gunaipani MEM situated at village Gunaipani, P.O-Chirakuti, Education Block-South Salmara, District Dhubri, presently headed by Chanmiah is the original school and on the basis of its originality, financial assistance was released and provincialisation too has been accorded as per 'Assam Education (Provincialisation of services of teachers and Re-organisation of Educational Institutions) Act."
19. The said Inquiry Report made by the Deputy Secretary was thereafter forwarded to the Secretary to the Government of Assam, Elementary Education Department, vide forwarding letter dated 25.03.2021 and the same has been accepted by the State Government.
20. This Court is of the view that there has to be finality to disputes, especially when the disputes relate to factual issues. As the impugned Inquiry Report has come to a finding that the Gunaipani M.E. Madrassa run by the respondent No. 7 is the original Madrassa, this Court does not find any ground to interfere with the said finding. If the petitioner is aggrieved with the same, he can always approach the Civil Court, as a writ Court is ill equipped to take evidence. The above being said, the Inquiry Report, which is Annexure-A to the affidavit-in-opposition filed by the respondent Nos. 7 to 9 has not been put to challenge in this writ petition. The petitioners have only prayed for setting aside the provincialisation Order dated 04.02.2021 and for provincialising the petitioners. There is no prayer for setting aside the Inquiry Report submitted by the Deputy Secretary, Elementary Education Department, which has been made in pursuance to the Order dated 22.11.2019 in WP(C) No. 173/2018.

21. In view of the above reasons, this Court does not find any ground to set aside the Inquiry Report submitted by the Deputy Secretary, Elementary Education Department. Consequently, the prayer of the petitioner for setting aside the provincialisation Order dated 04.02.2021 and for provincialisation of the service of the petitioners being without any basis, there is no ground for this Court to exercise its discretion in this case.

22. The writ petition is accordingly dismissed.