
(2023) 12 GAU CK 0004

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 6147 Of 2022

Jiban Ch. Barman And Anr.

APPELLANT

Vs

State Of Assam And 12 Ors

RESPONDENT

Date of Decision : 01-12-2023

Acts Referred:

Assam Education (Provincialisation of Services of Teachers and Re-Organization of Educational Institutions) Act, 2017 — Section 2(i), 3(1)(xii)
Right of Children to Free and Compulsory Education Act, 2009 — Section 3

Citation : (2023) 12 GAU CK 0004

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : M U Mondal

Final Decision : Allowed

Judgement

1. Heard Mr. M.U. Mondal, learned counsel for the petitioners. Also heard Mr. A. Phukan, learned counsel for the respondents in the Elementary Education Department of Government of Assam, Mr. B. Choudhury, learned counsel for the respondents in the SSA and as well as BTC respectively and Ms. D.D. Barman, learned Additional Senior Government Advocate for the respondent No. 6 being the Deputy Commissioner, Chirang.

2. This writ petition is instituted by Jiban Ch. Barman and Monjit Kumar Brahma both being teachers of Beltoli Nabajyoti LP School which is a mixed medium school. It is stated that the petitioner No. 1 Jiban Ch. Barman has been working as the Head Teacher from 16.11.1999 and the petitioner No. 2 Monjit Kumar Brahma has been working as an Assistant Teacher from 27.02.2002. The school was initially allotted the DISE Code No. 0311206 for the period 2009-2010 to till date. By a letter dated 01.11.2012 the school along with its DISE Code was bifurcated and was brought under the purview of Chirang district upon the bifurcation of the earlier Bongaigaon district into Bongaigaon district and Chirang district.

3. The claim of the petitioners for provincialisation was required to have been processed under the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 (in short, the Act of 2011) but the matter could not be taken further inasmuch as the DISE data regarding the school which is required to be maintained was not maintained in the appropriate manner. In the circumstances, the orders dated 29.09.2015, 07.07.2022 and 25.07.2022 were passed by the Director of Elementary Education, Assam and the Mission Director, Samagra Shiksha, Assam respectively, by which the claim for provincialisation of the petitioners stood rejected.

4. In the order dated 29.09.2015 of the Director of Elementary Education, Assam the claim for provincialisation under the Act of 2011 was rejected by providing that the petitioner school namely Beltoli Nabajyoti LP School which was under Borobazar Educational Block of Chirang district did not have a DISE Code for the year 2009-2010 or prior to 2009-2010. By the order dated 07.07.2022 of the Mission Director of Samagra Shiksha, Assam (SSA, Assam) an order was passed that the DISE data is maintained by an institution named NIEPA (National Institute of Educational Planning and Administration), New Delhi under the Government of India in the Education Department and therefore, it was not possible for the authorities under the SSA to modify or rectify the DISE data in respect of the Beltoli Nabajyoti LP School. By the order dated 25.07.2022 of the Director of Elementary Education, Assam, the claim for provincialisation of the petitioner school was rejected by taking a stand that it was not possible for the authorities either in the SSA or in the Director of Elementary Education, Assam to modify or rectify the DISE data which had already been frozen by the NIEPA functioned under the Ministry of Education Government of India.

5. Being aggrieved the present writ petition is instituted seeking a direction for setting aside the three orders dated 29.09.2015, 07.07.2022 and 25.07.2022 and also for a direction to the respondent authorities to provincialise the services of the petitioners.

6. We take note that the process for provincialisation of the petitioners was undertaken under the Act of 2011 but in the meantime the Act of 2011 had been declared to be ultra-virus by the judgment of this Court in Chandan Kr. Neog and others Vs. The State of Assam and others reported in 2016 (5) GLT 296. Upon the Act of 2011 being declared to be ultra-virus the State respondents had enacted the Assam Education (Provincialisation of Services of Teachers and Re-Organization of Educational Institutions) Act, 2017 (in short, the Act of 2017).

7. As the matter had not been carried forward sufficient enough to invoke the provisions of the Act of 2011, we are of the view that the claim for provincialisation of the petitioners would now have to be considered under the Act of 2017. But at the same time, we also take note of the reasons provided in the three orders dated 29.09.2015, 07.07.2022 and 25.07.2022 for rejecting the claim for provincialisation.

8. A reading of the three orders dated 29.09.2015, 07.07.2022 and 25.07.2022 makes it discernible that the only reason why the provincialisation of the services of the petitioners was rejected is that the Beltoli Nabajyoti LP School did not have appropriate DISE data for certain period prior to the year 2009 whereas it is also an admitted position of the respondents that there was an anomaly in maintaining the DISE data inasmuch as the school which originally located in the Bongaigaon district was within the Chirang district after the bifurcation and during the bifurcation there were certain miscommunications between the authorities. Be that as it may, we take note that the provincialisation was refused as because the complete DISE data information is not available.

9. To justify the rejection of the provincialisation, Mr. A. Phukan, learned counsel for the Elementary Education Department relies upon the provisions of Section 3 (1) (xii) of the Act of 2017 which provides that for the purpose of provincialisation the enrollment shall be verified with the data as per the DISE Code of the year 2009-10 or before as may be available in the records of the National University of Educational Planning and Administration.

10. From such point of view, we are in agreement with the submissions of Mr. A. Phukan, learned counsel for the Elementary Education Department that as the appropriate DISE data in respect of the Beltoli Nabajyoti LP School is not available, therefore, the further process of provincialisation cannot be carried forward. But at the same time, we also take note of the report dated 08.06.2022 of the District Mission Coordinator, SSA made to the Executive Director, SSA. The said report is pursuant to an enquiry conducted by the District Mission Coordinator upon a personal visit of the Beltoli Nabajyoti LP School made on 04.06.2022 as regards the verification of reports and records of DISE Code 2009-10. The report of the District Mission Coordinator is extracted as below:

"With reference to the subject and letter no quoted under reference, I have the honor to state that I have personally visited Beltoli Nabajyoti LPS on 4th June 2022 at 1 PM in connection with verification of reports and records of DISE Code 2009-10 in respect of the school and my observation and findings are as follows:-

1. A photocopy of DCF/ DISE for the Academic Year 2009-10 with date of reference to 30th September/2009. (Copy enclosed as Annexure-1)
2. A copy of clarification letter on DISF Code prior to 2009-10 in respect of Beltoli Nabajyoti LPS having DISE Code no 18040311206 issued by the DEEO cum DMC SSA, Bongaigaon vide letter No SSA/BNGN/MIS-10/DISE/854/12/Pt-I/898/13/151, dtd 16.01.2014 to the DEEO, Chirang.(Copy enclosed as Annexure-2)
3. A photocopy regarding submission of school DISE Code in respect of Beltoli Nabajyoti LPS under Borobazar Block at Sl.No.-77 issued from the DEEO cum DMC SSA, Bongaigaon vide letter no. SSA/Bngn/SSA School Data nos/4845, dtd 30.10.2012/ 11.11.2012 to DEEO, Chirang. (Copy enclosed as Annexure-3)

Physical Existence of the School:-

1. Date of Establishment of the School 17.03.1999
2. Land Records:- 2 Bigha's in the name of Schools.
3. SMC:- Yes
4. Building:- 1Nos
5. MDM & FTB:- Provided regularly
6. Teachers Attendance Register w.e.f 17.03.1999 to 04.06.2022 (i.e. till the date of inspection by the undersigned):- Verified.
7. Students Attendance Register w.e.f 17.02.1999 to 04.06.2022 (i.e. till the date of inspection by the undersigned):- Verified.
8. Conduct of Gunotsav 2017, 2018 & 202222 by the Schools: Verified (Copy Enclosed as Annexure 4,5&6)
9. Enrolment of the schools as on 4th June 2022: Assamese Medium:- 24 Nos.
Bodo Medium:- 13

Total:- 37 Nos.

10. Teaching Staffs:- i) Jiban Ch., Barman Head Teacher ii) Manjit Kr Brahma, Asstt. Teacher

11. Nos of Cook cum Helper:-2 Nos.

12. Toilets, Drinking Water, Electrification of Schools:- Yes

13. Photographs of physical Existence of the Schools made on 4th June, 2022 by the Dmc, SSA, Chirang (Copy Enclosed as Annexure-7)"

11. A reading of the report makes it discernible and explicit that the school was established on 17.03.1999, it has land of 2 Bighas in the name of the school, the school has a SMC along with a building. What is more relevant that the teachers attendance register w.e.f. 17.03.1999 to 04.06.2022 was verified and accepted by the District Mission Coordinator to be in order, the students attendance register from 17.03.1999 to 04.06.2022 was also verified and found to be in order.

12. Section 2 (i) of the Act of 2017 defines DISE Code to mean District Information System for Education Code prepared by the Sarba Sikhsa Abhijan, Assam and as available in the records of the National University of Educational Planning and Administration. It is stated on the basis of an affidavit by the respondents in the Elementary Education Department that the DISE data is the

annual data regarding the teaching staff and enrollment of the students in a given school of the respective years for which the school is claimed to have its existence, which is required to be submitted periodically.

13. The relevance of DISE data is understood to be a prima facie satisfaction of the authorities that the school concerned has the required teacher enrollment for the years for which it is claimed to be in existence as well as the enrollment and existence of the students for the period of its existence, more particularly for the period prior to the years 2009-2010. In other words, the concept of DISE Code and DISE data is the records of the aforesaid information regarding the school being maintained in an electronic form under the control of the SSA and presently maintained in the institute NIEPA.

14. From such point of view, absence of the information regarding a school in the DISE data can also prima facie be construed to be a situation where the school concerned may not be in existence or it does not have the required students and teachers. But in the instant case what is further noticed is that as per the report of the District Mission Coordinator dated 08.06.2022, it has been clearly stated that the Beltoli Nabajyoti LP School is located in a very remote area in the Kuklung forest range in the Indo-Bhutan Border area and the school is located in No. 1 Dangsiapara village under Borobazar Educational Block which the District Mission Coordinator had reported to be a place which is very backward both economically and educationally. But what is most relevant is that the school is the only educational institution within a radius of 3 kilometer in such a remote area. The District Mission Coordinator during his inspection also had an interaction with the members of the SMC, teachers, students and a definite view is expressed that there is a necessity of a school in that locality for spread of education.

15. The Right of Children to Free and Compulsory Education Act, 2009 under Section 3 provides that every child of the age of 6 to 14 years shall have the right of free and compulsory education in a neighbourhood school till completion of his/her elementary education. In other words, it is a statutory right of the children of the locality where the school is presently located to have free and compulsory education where the report states that it is the only school in the locality within a radius of 3 kilometer in an extremely remote area in the Indo-Bhutan Border which is backward both economically and educationally.

16. It is also a distinct possibility that non-recording of the information regarding the school in the DISE data as had been arrived at by the authorities in the Director of the Elementary Education, Assam and the authorities in the SSA, Assam in the aforesaid orders dated 29.09.2015, 07.07.2022 and 25.07.2022 is because of the extreme remote location of the school in the Indo-Bhutan area inside the forest range which is economically and educationally backward. As already held DISE data is maintained for providing the information of the existence of the school, its teachers and the students.

17. From such point of view, the provisions of Section 3 (1) (xii) of the Act of 2017 had been brought in that only such schools would be subjected to be provincialised in respect of whom the information is captured in the DISE data prior to 2009-2010. But having regard to the factual situation with reference to the report dated 08.06.2022 that the Beltoli Nabajyoti LP School is located in an extreme remote area inside the forest range in the Indo-Bhutan Border which is backward both economically and educationally and it is the only school within the vicinity in the area, we have to understand that the Beltoli Nabajyoti LP School can also be accepted to be a reasonable classification with an intelligible differentia with the object at hand from the other regular schools which are subjected to the provincialisation under the Act. If the same applicability and meaning of Section 3 (1) (xii) is also given to the Beltoli Nabajyoti LP School, there would be a violation of Article 14 of the Constitution inasmuch as two classes having a distinct differentiation with each other would be subjected to the same law. Furthermore, the factual depiction as per the records is that all the information that otherwise ought to have been stored in the DISE data is verified and accepted to be available in respect of the Beltoli Nabajyoti LP School as per the report dated 08.06.2022 meaning thereby that the purpose for maintaining the DISE data in respect of the Beltoli Nabajyoti LP School in the facts of the present case is otherwise satisfied and it is only a technical aspect that the data had not been included in the DISE data maintained by the authorities.

19. From such point of view without giving a strict technical interpretation, the requirements of Section 3 (1) (xii) of the Act of 2017 is also satisfied in the present case inasmuch as the required information which ought to have been stored in the DISE is otherwise available in respect of the petitioner school. Thirdly we also take note that there is a conflicting situation that on one hand Section 3 of the Right of Children to Free and Compulsory Education Act, 2009 provides for free and compulsory education to the children in a neighbourhood locality and where there is only one school available in the neighbourhood locality which also existed from the year 1999 and therefore, by adopting a strict technical interpretation of Section 3 (1) (xii) of the Act of 2017, the provincialisation which otherwise the school is entitled should not be refused.

20. From such point of view, the three orders dated 29.09.2015, 07.07.2022 and 25.07.2022 are set aside. The respondents in the Director of Elementary Education to process the claim for provincialisation of the teachers of the Beltoli Nabajyoti LP School as per law provided otherwise the two teachers are entitled and it should not be rejected again merely on the ground that the DISE data being not available.

21. It is clarified that the present adjudication is made in the peculiar facts and circumstance of the matter regarding the extreme remote location of the school in the Indo-Bhutan Border in a forest area where the school being isolated from others may not have been subjected to the same treatment as the said schools in the State may have received and as such, apart from the determination on the

question of law, the direction contained herein may not be a precedent.

22. By referring to page-37 Mr. M.U. Mondal, learned counsel for the petitioners states that the school was already provincialised but it is only the salaries which are not being paid to the petitioners. If that is so, as the school is otherwise to be provincialised as held hereinabove, consequence thereof would be that the teachers would also be entitled to the salaries and accordingly, the salaries of the petitioners be also paid as per their entitlement within a period of one month from the date of receipt of certified copy of this order.

23. The order providing for withdrawal of provincialisation is also set aside. Writ petition stands allowed of in the above terms