

HIGH COURT OF MEGHALAYA

WP(C) No. 206 of 2013

Shri Samiul Islam
S/o Shri Mostakim Mondol
of village Kanarchar
P.O. Sobribari, Pin-794104
P.S. Tura
District: West Garo Hills
Meghalaya.

.... Petitioner

- **Vrs** -
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1. The State of Meghalaya
Represented by its Commissioner &
Secretary (Education Department)
Shillong.
2. The Director
School Education and Literary,
Meghalaya, Shillong
3. The Joint District Mission Coordinator SSA
Dadenggre, West Garo Hills
Meghalaya
4. Shri Abdul Mazid Sk
Secretary Konarchar Girls UP School
of Konarchar village
P.O. Sobribari, Pin-794104
P.S. Tura
District: West Garo Hills, Meghalaya

..... Respondents

BEFORE THE HON'BLE MR JUSTICE SR SEN

Advocate for the Petitioner	:	Mr AS Siddiqui
Advocates for the Respondents	:	Mr. ND Chullai Mr. KP Bhattacharjee Mr. N Syngkon
Date of Hearing	:	19.11.2014.
Date of Judgment	:	19.11.2014

JUDGMENT & ORDER (Oral)

The petitioner's case in nut shell is that, "the Right of Children to Free and Compulsory Education Act, 2009 and the Meghalaya Right of Children to Free and Compulsory Education Rules, 2011 and directives of the State respondent clearly mandated

that the Headmaster of the School shall convene a meeting of the parents and guardians of the school to constitute the Management Committee of the school and at least three-fourth of the members of the Management Committee of the school shall be the Parents or Guardians of the children. But in this instant case, the Management Committee which is constituted by the respondent No. 3 does not conform to any of the requirement of the law and as such the same is required to be set aside and quashed.”

2. Mr. AS Siddiqui, learned counsel appearing for on behalf of the petitioner submits that, the impugned order dated 9.07.2013 is not in consonance with the provision of Section-21 of the Right of Children to Free and Compulsory Education Act, 2009 and Rule-3 of the Right of Children to Free and Compulsory Education Rules, 2010, hence, he prayed that the said impugned order may be quashed and necessary direction may be passed as this Court deemed fit and proper.

3. On the other hand, Mr ND Chullai, learned senior counsel assisted by Mr. KP Bhattacharjee, learned State counsel submits that, the petitioner has taken part in the meeting, so at this stage he cannot raise any objection.

4. After hearing the rival submissions advanced by the learned counsel at the bar and after going through the impugned order dated 9.07.2013, it appears that, the Management Committee was constituted comprising of 12(twelve) Members i.e. 1(one) President, 1(one) Vice-President, 1(one) Secretary, 2(two) Teacher Representative, 5(five) Guardian Member and 2(two) Members.

5. Now looking back to the provision of Section-21 of the Right of Children to Free and Compulsory Education Act, 2009 which is reproduced herein below :

“21. School Management Committee. –(1) A school, other than a school specified in sub-clause (iv) of clause (n) of section 2, shall constitute a School Management Committee consisting of the elected representatives of the local authority, parents or guardians of children admitted in such school and teachers:

Provided that at least three-fourth of members of such Committee shall be parents or guardians:

Provided further that proportionate representation shall be given to the parents or guardians of children belonging to disadvantaged group and weaker section:

Provided also that fifty per cent of Members of such Committee shall be women.

(2) The School Management Committee shall perform the following functions namely:-

(a) monitor the working of the school;

(b) prepare and recommend school development plan;

(c) monitor the utilization of the grants received from the appropriate Government or local authority or any other source; and

(d) perform such other functions as may be prescribed.”

6. On bare perusal of Section-21 referred to above, it appears that, the Management Committee should be constituted comprising of at least three-fourth of the Members from the Parents or Guardians, secondly, proportionate representation should be given to the Guardians belonging to disadvantage group or weaker section and thirdly, 50% of the Members of the Committee shall be women.

7. Rule-3 of the Right of Children to Free and Compulsory Education Rules, 2010 is also reproduced herein below.

“3. Composition and functions of the School Management Committee. –

(1) A School Management Committee (hereinafter in this rule referred to as the said Committee) shall be constituted in every school, other than an unaided school, within six months of the appointed date, and reconstituted every two years.

(2) Seventy five percent, of the strength of the said Committee shall be from amongst parents or guardians of children.

(3) The remaining twenty five percent, of the strength of the said Committee shall be from amongst the following persons, namely:-

(a) one third members from amongst the elected members of the local authority, to be decided by the local authority;

(b) one third members from amongst teachers from the school, to be decided by the teachers of the school;

(c) one third members from amongst local educationists or children in the school, to be decided by the parents in the said Committee.

(4) To manage its affairs, the said Committee shall elect a Chairperson and Vice-Chairperson from among the parent members; the head teacher of the school, or where the school does not have a head teacher, the senior most teacher of the school, shall be the ex officio member-convenor of the said Committee.

(5) The said Committee shall meet at least once a month, and the minutes and decisions of the meetings shall be properly recorded and made available to the public.

(6) The said Committee shall, in addition to the functions specified in clauses (a) to (d) of section 21, perform the following functions, namely:-

(a) communicate in simple and creative ways to the population in the neighbourhood of the school, the rights of the child as enunciated in the Act; as also the duties of the appropriate Government, local authority, school, parent and guardian;

(b) ensure the implementation of clauses (a) and (e) of section 24, and section 28;

(c) monitor that teachers are not burdened with non academic duties other than those specified in section 27;

(d) ensure the enrolment and continued attendance of all the children from the neighbourhood in the school;

(e) monitor the maintenance of the norms and standards specified in the Schedule;

(f) bring to the notice of the local authority any deviation from the rights of the child, in particular mental and physical harassment of children, denial of admission, and timely provision of free entitlements as per sub-section (2) of section 3;

(g) identify the needs, prepare a plan, and monitor the implementation of the provisions of section 4;

(h) monitor the identification and enrolment of, and facilities for education of children with disability, and ensure their participation in, and completion of elementary education;

(i) monitor the implementation of the mid-day meal in the school;

(j) prepare an annual account of receipts and expenditure of the school.

(7) Any money received by the said Committee for the discharge of its functions under this Act, shall be kept in a separate account, to be audited annually.

(8) The accounts referred to in clause (j) to sub-rule (6) and sub-rule (7) should be signed by the Chairperson or Vice-Chairperson and Convener of the said Committee and made available to the local authority within one month of their preparation.”

8. Rule-3 of the Right of Children to Free and Compulsory Education Rules, 2010 further speaks that, the Management Committee to be constituted or re-constituted every 2(two) years. 75% of the strength shall be from Parents or Guardians and the remaining 25% shall be one third from amongst the elected members of the local authority, one third members from amongst the teachers and one third member from amongst the local educationist or children in the school, to be decided by the parent in the said Committee. For management of its affairs, the Committee shall elect a Chairperson and Vice-Chairperson from amongst the parent members; the head teacher of the school, or where the head teacher is not available, the senior most teacher shall be the ex officio member-convener of the said Committee. The Committee shall meet at least once in a month to do the needful as prescribed in Rule-3.

9. On careful reading of Section-21 of the Right of Children to Free and Compulsory Education Act, 2009 and Rule-3 of the Right of Children to Free and Compulsory Education Rules, 2010 referred to

above, I find that impugned order dated 9.07.2013 is not in consonance with the said provision of Section-21 of the Right of Children to Free and Compulsory Education Act, 2009 and Rule-3 of the Right of Children to Free and Compulsory Education Rules, 2010.

10. Since the impugned order dated 9.07.2013 is not in consonance with the provision as discussed above, I find that the order is bad in law. It is a settled principle of law that, when law prescribed rule or provision, it to be followed in that manner or otherwise it should not be.

11. I have also perused the affidavit-in-opposition on record filed by respondent 1, 2 & 3 wherein it is stated that, in fact the petitioner appears to be and/or perhaps present in the Proceeding of the General Public/Guardian meeting at Konarchar Girls UP School held on 25.03.2013.

12. On bare reading of the contents of the affidavit at Para-9, it is not clear whether the petitioner was really present in the meeting or not because the word perhaps does not connote certainty, hence, I am not in position to agree with the contents of the affidavit.

13. For the reasons as discussed above, I hereby set aside the impugned order dated 9.07.2013 and direct both the petitioner as well as the respondents to take necessary steps as far as the observations made in this Judgment & Order taking into consideration the provision as laid down under Section-21 of the Right of Children to Free and Compulsory Education Act, 2009, Rule-3 of the Right of Children to Free and Compulsory Education Rules, 2010 as well as the Meghalaya Right to Children to Free and Compulsory Education Rules, 2011 and the whole exercise to be completed within 1(one) month from the date of receiving certified copy of this order.

14. In the meantime, as time gap arrangement respondent No. 3 is directed to manage and to look into the welfare of the School.

15. Parties to bear their own costs.

16. With these observations and directions, this instant petition is allowed the matter stands disposed of.

JUDGE

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