

GAHC010241892018



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

Case No. : WP(C) 7522/2018

1:THE SCHOOL MANAGEMENT AND DEVELOPMENT COMMITTEE (SMDC)
OF NEW HATIPOTA HIGH SCHOOL
REP. BY ITS PRESIDENT SHOHIDUL ALI SHEIKH, S/O. LT. HAJI ASRAF ALI
SHEIKH, R/O. SILDANGA, P.O. HATIPOTA, DIST. DHUBRI, ASSAM.

VERSUS

1:THE STATE OF ASSAM AND 5 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
EDUCATION (SECONDARY) DEPTT., DISPUR, GUWAHATI-06.

2:THE STATE OF ASSAM
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
EDUCATION (ELEMENTARY) DEPTT.
DISPUR
GUWAHATI-06.

3:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY.-19.

4:THE INSPECTOR OF SCHOOLS
DDC
DHUBRI
P.O. AND DIST. DHUBRI
ASSAM-783301.

5:THE DIST. ELEMENTARY EDUCATION OFFICER
DHUBRI
P.O. AND DIST. DHUBRI

ASSAM-783301.

6:THE SCHOOL MANAGING COMMITTEE OF HATIPOTA LP SCHOOL
REP. BY ITS PRESIDENT SANOWAR HUSSAIN
S/O. LT. SHAKUR ALI
VILL. SRIGRAM PARTIV
P.O. HATIPOTA
DIST. DHUBRI
ASSAM-783348

Advocate for the Petitioner : MR. M KHAN

Advocate for the Respondent : SC, SEC. EDU.

BEFORE

HON'BLE MR.JUSTICE MICHAEL ZOTHANKHUMA

ORDER

31-10-2018

Heard Mr. M. Khan, the learned counsel for the petitioner and Mr. N. Sarma, the learned Standing Counsel, Elementary and Secondary Education Department, for the respondent Nos. 1 to 5.

The petitioner's case in brief is that in pursuance to the Office Memorandum (in short O.M.) dated 22.09.2016 issued by the Government of Assam, the new Hatipota LP School was amalgamated with the petitioner's High School vide order dated 20.01.2018. However, on the basis of a representation made by the respondent No.6, against the amalgamation order in pursuant to the order dated 27.07.2018 passed in WP(C) No.4892 of 2018, the respondent No.2 was directed to take a decision on the said representation.

Consequent to the above, the respondent No.2 issued the impugned order dated 06.10.2018 by which the amalgamation order dated 20.01.2018 was canceled.

The petitioner school has made a challenge to the impugned order dated 06.10.2018 issued by the respondent No.2, on the ground that the conclusions made by the respondent

No.2 for cancelling the amalgamation order dated 20.01.2018, is not in conformity with the relevant provisions of the O.M. dated 22.09.2016. The petitioner's counsel also submits that the petitioner was not given an opportunity of hearing before the impugned order dated 06.10.2018 was issued.

The petitioner's counsel submits that the impugned order dated 06.10.2018 should be set aside and the amalgamation order dated 20.01.2018 should be restored.

Mr. N. Sarma, the learned Standing Counsel for the respondent Nos. 1 to 5, submits that as per Clause 7 of the O.M. dated 22.09.2016, any dispute arising out of the order of amalgamation can be challenged in appeal before the Government. Accordingly, the petitioner can file an appeal against the impugned order dated 06.10.2018. Mr. N. Sarma further submits that there is no violation of the petitioner's legal or fundamental rights by cancelling the amalgamation order dated 20.01.2018.

I have heard the learned counsels for the parties.

Clause-7 of the O.M. dated 22.09.2016 would not be applicable to the case in hand, inasmuch as, the highest authority under the Secondary Education Department is the Commissioner & Secretary to the Government of Assam and Elementary Education Department, who had issued the impugned order dated 06.10.2018. Accordingly, no appeal can be filed by the petitioner against the said order, as there is no higher authority than the person who had issued the said impugned order. However, it is noticed that no representation has been filed by the petitioner to the respondent No.2 with regard to the impugned order dated 06.10.2018. This Court is of the view that as there is an alternative remedy available and as the Government has the power to review its decision, the petitioner should first utilize the said alternative remedy prior to coming to this Court. Also the petitioner should have been given an opportunity of being heard before the impugned order dated 06.10.2018 was issued.

In view of the reasons stated above, the petitioner is given the liberty to file a representation to the respondent No.2, with his grievance regarding cancellation of the amalgamation order. In the event the petitioner files a representation against the impugned order dated 06.10.2018, the respondent No.2 shall take a decision on the same after giving

an opportunity of hearing to the petitioner and the respondent No.6. Further, the respondent No.2 shall not be influenced or be bound by the impugned order dated 06.10.2018 at the time of deciding the petitioner's grievance. The respondent No.2 shall make his decision on the petitioner's representation within a period of 4 (four) weeks from the date of receipt of the petitioner's representation, which shall be accompanied with a copy of the writ petition.

Writ petition accordingly stands disposed of.

JUDGE

Comparing Assistant