

GAHC010001602019



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

Case No. : PIL(Suo Moto)/1/2019

XXXX
XXXX

VERSUS

IN RE- THE STATE OF ASSAM AND 4 ORS.
REPRESENTED BY THE ADDL. CHIEF SECRETARY, DEPARTMENT OF
SOCIAL WELFARE, JANATA BHAWAN, DISPUR, GUWAHATI - 781006.

2:STATE OF ASSAM
REPRESENTED BY THE PRINCIPAL SECRETARY
HOME AND POLITICAL DEPARTMENT
JANATA BHAWAN
DISPUR
GUWAHATI - 781006.

3:DIRECTOR GENERAL OF POLICE
ASSAM
ASSAM POLICE HEADQUARTERS
B.K. KAKATI ROAD
ULUBARI
GUWAHATI - 781006.

4:SUPERINTENDENT OF POLICE
SIVASAGAR
PACHI PATHAR
SIVASAGAR - 785640

5:ASSAM STATE COMMISSION FOR PROTECTION OF CHILD RIGHTS
REPRESENTED BY THE CHAIRPERSON
SURVEY
BELTOLA

SAMANNYA PATH
BYLANE NO. 1
HOUSE NO. 3
GUWAHATI - 781028

6:MIGUEL QUEAH
SON OF BARNABAS MILTON QUEAH
FOUNDER AND EXECUTIVE DIRECTOR OF UTSAH CHILD RIGHTS
ORGANISATION
5B BLOCK A
SUBANSIRI APARTMENTS
GOVERNMENT PRESS ROAD
BAMUNIMAIDAN
GUWAHATI-781021

P R E S E N T

HON'BLE THE CHIEF JUSTICE MR. R.M. CHHAYA
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

For the Gauhati High Court : Mr. H.K. Das, *Advocate*

For the respondent Nos.1 to 5 : Mr. D. Nath,
Senior Government Advocate, Assam

For the respondent No6 : Mr. K. Goswami,
Senior Advocate

Mr. A. Sandilya, *Advocate*

Date of hearing and judgment : **22nd December, 2022**

JUDGMENT & ORDER

R.M. Chhaya, C.J.

Heard Mr. H.K. Das, learned counsel for the Gauhati High Court. Also heard Mr. D. Nath, learned Senior Government Advocate, Assam for the State respondents and Mr. K. Goswami, learned senior counsel assisted by Mr. A. Sandilya, learned counsel for the respondent No.6.

2. The present public interest litigation raises an alarming and important aspect based upon a news article published in English daily, 'The Assam Tribune' on 20.12.2018. It was reported that three girl inmates of a children's home, namely, Swapnalaya Children's Home situated in Sivasagar, were subjected to sexual and physical abuse by the Superintendent of the said children's home, which led to an attempt to commit suicide by one of the victims. The victims, who escaped from the children's home, were rescued and they were produced before the Child Welfare Committee, Sivasagar and their statements were taken. It was found that two persons, namely, Parag Goswami, Superintendent of the said children's home and the house-mother Gita Kakati were alleged to be responsible for the incident that was reported and accordingly, an FIR was lodged against those two persons under the relevant sections of Indian Penal Code as well as POCSO Act. On cognizance taken by this Court, various orders have been passed in this petition. However, instead of referring to them, it deserves to be noted that after the FIR was lodged, charge-sheet was filed and the learned Sessions Court was pleased to acquit both the accused. It is also pointed out by Mr. D. Nath, learned Senior Government Advocate, Assam that State has already filed an appeal before this Court against the order of acquittal and as there was a delay in filing the said appeal, IA(CrI) 485/2022 has been

filed and the matter is now to come up in the month of January, 2023. As far as the legal actions are concerned, it clearly appears that the State is pursuing the remedy of appeal before this Court.

3. Mr. K. Goswami, learned senior counsel appearing for the respondent No.6 invited attention of this Court to the affidavits that were filed as well as the written submissions which have been filed by the respondent No.6. Mr. Goswami, learned senior counsel contended that though there was ample evidence, the trial has not been conducted in proper manner by the prosecution which has resulted into acquittal. However, the respondent No.6 shall pursue the same before the competent court. Mr. Goswami, learned senior counsel has also relied upon the relevant provisions of Juvenile Justice (Care and Protection of Children) Act, 2015 and emphasised that in order to see that such incident like the present one does not occur, appropriate directions deserve to be passed for protection of child right. Referring to the written submissions, Mr. Goswami, learned senior counsel contended that appropriate directions be issued at the paramount interest of the victim children who suffered sexual abuse and violence.

4. Having heard the learned counsel appearing for the respective parties, the following directions are issued;

- i) the State Government shall pursue the appeal in accordance with law;
- ii) the State Government and the Assam State Commission for Protection of Child Rights shall strictly adhere to the provisions of the Commission for protection of Child Rights Act, 2005 while conducting enquiry into case relating to child rights violence;
- iii) the State Government through Assam State Commission for Protection of Child Rights shall conduct immediate training on child rights enquiry

procedure for all stake-holders;

iv) Assam State Commission for Protection of Child Rights shall only exercise power which are granted by the Act and shall act as per the limited jurisdiction that has been provided for protection in Child Rights Act, 2005 and shall not involve or engage itself into enquiry and shall not investigate or attempt to gather material;

v) the State Government and Assam State Commission for Protection of Child Rights shall pursue any such incident reported to it in accordance with the provisions of the act and shall take all necessary steps to protect the right of the child who has suffered either sexual abuse or violence and shall take appropriate legal steps as envisaged under different acts;

vi) the State Government and Assam State Commission for Protection of Child Rights shall file a report of any such incident and the steps taken, including the enquiry made and the result of that enquiry, to the Juvenile Justice Committee of Guahati High Court every six months, i.e. twice in a year.

5. With the aforesaid directions, the present PIL is disposed of leaving it for the competent court to decide the appeal in accordance with law.

JUDGE

CHIEF JUSTICE

Comparing Assistant