

GAHC010318582019



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

**Case No. : PIL/8/2020**

DIPA BASFOR  
W/O SHRI RAMA DOOM, R/O NEW MARKET, HARIJAN COLONY,  
DIBRUGARH, P.O. AND P.S. DIBRUGARH, DIST. DIBRUGARH, ASSAM, PIN-  
786001

VERSUS

THE STATE OF ASSAM AND 5 ORS.  
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,  
DEPTT. FOR WELFARE OF PLAIN TRIBES AND BACKWARD CLASSES,  
JANATA BHAWAN, GUWAHATI-781006

2:THE COMMISSIONER AND SECRETARY  
TO THE GOVT. OF ASSAM  
DEPTT. FOR WELFARE OF PLAIN TRIBES AND BACKWARD CLASSES  
JANATA BHAWAN  
GUWAHATI-781006

3:JOY KARAN BALMIKI  
R/O VILL. NAHARONI  
NAHARKATIA  
DIST. DIBRUGARH  
ASSAM  
PIN-786610

4:R.N. PRASAD  
R/O G.M.C. OLD COLONY  
FATASIL  
GUWAHATI-781025

5:PRADIP BASFOR  
R/O SOLAPARA JHARIGAON COLONY

ULUBARI  
GUWAHATI-781007

6:SUSHILA BASFORE  
R/O G.M.C. OLD BASFORE COLONY  
FATASIL  
GUWAHATI-78100

**Advocate for the Petitioner** : MR. P D NAIR

**Advocate for the Respondent** : GA, ASSAM

**BEFORE**  
**HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA**  
**HONOURABLE MR. JUSTICE ROBIN PHUKAN**

**JUDGMENT & ORDER (ORAL)**

**Date** : 02-02-2023

*(A.M. Bujor Barua, J)*

Heard Mr. S R A Nasser, learned counsel for the petitioner. Also heard Mr. R Dhar, learned Additional Senior Government Advocate for the respondents no. 1 and 2 being the authorities under the Department of Welfare of Plain Tribes and Backward Classes, Mr. A Goyal, learned counsel for the respondents no. 4 and 6 namely R N Prasad and Ms. Sushila Basfore.

2. Office note indicates that although steps have been taken on the respondents no. 3 and 5 by registered post neither A/D Card nor any un-served notice have been received back.

3. We have noticed that this PIL is pending since the year 2020 assailing the notification dated 18.08.2018 of the Department of Welfare of Plain Tribes and Backward Classes of the Government of Assam by which a Committee as required under Section 26(1) of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 (in short, the Act of 2013) had been constituted.

4. The petitioner brings it to the notice of the Court of the provisions of Section 26(1)(i) of the Act of 2013 which inter-alia provides as extracted:

*“26(1)(i) not more than four social workers belonging to organization working for the*

*prohibition of manual scavenging and rehabilitation of manual scavengers, or, representing the scavenger community, resident in the State, to be nominated by the State Government, two of whom shall be women;”*

5. A reading of Section 26(1)(i) makes it discernable that in respect of social worker members of the Committee two of them shall be woman. The petitioner points out that in the Committee under the notification dated 18.08.2018 in respect of the social worker members three of the members namely Shri Joy Karan Balmiki, Shri R N Prasad, Shri Pradip Basfor are men whereas Smt. Suhila Basfore is the only woman and therefore, there is an aberration of the requirement of Section 26(1)(i) of the Act of 2013 inasmuch as two women members are not included in the Committee.

6. Prima facie it is noticed that the requirement of Section 26 (1)(i) of the Act of 2013 had not been followed while constituting the Committee under Section 26(1) by the Notification dated 18.08.2018 in respect of the social worker members. In the circumstance, we are of the view that the interest of justice would be met on a direction being issued to the Commissioner and Secretary to the Government of Assam in the Department of Social Justice and Empowerment to do the needful to bring in the rectification. We take note that the Department of Welfare of Plain Tribes and Backward Classes had in the meantime been bifurcated into two departments and the subject matter involved in this writ petition would now be under the Department of Social Justice and Empowerment.

7. As some change may be incorporated in the social welfare members in the *Section 26(1)* Committee under the Act of 2013, we further provide that the Commissioner and Secretary of the Social Justice and Empowerment Department while doing the needful shall also give due opportunity to all the three male social worker members of the Committee before passing any order which shall be in conformity with the requirement of Section 26(1) (i) of the Act of 2013. The Commissioner and Secretary to do the needful within a period of two months from the date of receipt of certified copy of this order and we reiterate and clarify that whatever corrective measure is taken, if it affects the existing male social worker members of the Committee in any manner, the same be done by only giving opportunity to the said members but in doing so the Commissioner and Secretary to also take note of the requirements of Section 26(1)(i) of the Act of 2013.

Writ petition stands disposed of in the above terms.

**JUDGE**

**JUDGE**

**Comparing Assistant**