

GAHC010192972023



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

Case No. : WP(C)/5013/2023

NIBARAN KALITA
S/O- LATE TANU RAM KALITA, R/O- SANTIPUR OF NALBARI TOWN, WARD
NO. 7, P.S. AND DIST. NALBARI, ASSAM

VERSUS

THE STATE OF ASSAM AND 30 ORS
NOTICE THROUGH THE CHIEF SECRETARY, ASSAM, DISPUR.

2:THE DISTRICT COMMISSIONER
NALBARI
ASSAM

3:SMT. BARNALI DEKA
DISTRICT COMMISSIONER
NALBARI.

4:SMT. CHAYANIKA THAKURIA
ADC
NALBARI.

5:KUNKUM DAS
FINANCE AND ACCOUNTS OFFICER
D.C. OFFICE
NALBARI

6:JAYANTA MALLA BARUAH
HONBLE MINISTER
PUBLIC HEALTH ENGINEERING
SKILL AND ENTREPRENURESHIP AND TOURISM
ASSAM
DISPUR.

7:MADAN MALAKAR
R/O- PALLA ROAD
P.O.
PS. AND DIST. NALBARI
PIN- 781335.

8:MANOJ KUMAR CHOUDHURY
S/O- LATE KANAK CHOUDHURY
PERMANENT RESIDENT OF NATIRAM ROAD
GOPAL BAZAR
NALBARI TOWN
DIST. NALBARI
ASSAM

9:SRI SRI NALBARI HARI MANDIR

NALBARI
REP. BY ITS PRESIDENT
SRI ASHOK KUMAR SARMA
FORMER MLA

S/O LATE LAKHI NATH SARMA

BARKURA
BARAMA ROAD

WARD NO. 8 OF NALBARI TOWN

DIST. NALBARI

10:SHRI NAGEN DEKA
GENERAL SECRETARY OF SRI SRI NALBARI HARI MANDIR

S/O LATE TARINI DEKA
R/O VILL- DIGHELI
P.O. BAR DIGHELI
P.S. NALBARI
DIST.NALBARI

11:SRI BANASHWER DAS
S/O SISHURAM DAS
NALBARI HARI MANDIR
N.T. ROAD
NALBARI
DIST. NALBARI

12:SRI SUBHASH DEBNATH

S/O LATE PRAMOD DEBNATH
NALBARI HARI MANDIR

N.T. ROAD NALBARI
DIST. NALBARI

13:SRI SUBODH DEKA
S/O LATE KRISHNAKANTA DEKA
NALBARI HARI MANDIR
N.T. ROAD
NALBARI
DIST. NALBARI

14:SRI KESHAB BARMAN
S/O LATE BIPIN BARMAN
NALBARI HARI MANDIR
N.T. ROAD
NALBARI
DIST. NALBARI

15:SRI PRADIP CHOUDHURY
S/O LATE AMULYA CHOUDHURY
NALBARI HARI MANDIR
N.T. ROAD
NALBARI
DIST. NALBARI

16:SRI MALAY MAHANTA
SO LATE SARAT MAHANTA
NALBARI HARI MANDIR
N.T. ROAD
NALBARI
DIST. NALBARI

17:SRI KAILASH MEDHI
S/O LATE GIRISH MEDHI
NALBARI HARI MANDIR
N.T. ROAD
NALBARI
DIST. NALBARI

18:SRI ASHOK DAS
S/OLATE GIRIDHAN DAS
NALBARI HARI MANDIR
N.T. ROAD
NALBARI
DIST. NALBARI

19:SRI SHISHU HALOI
S/O LATE MUARAM HALOI
NALBARI HARI MANDIR
N.T. ROAD
NALBARI
DIST. NALBARI

20:SRI HAREN HALOI
S/O LATE SARAT HALOI
NALBARI HARI MANDIR
N.T. ROAD
NALBARI
DIST. NALBARI

21:SRI RATUL ROY
S/O LATE SUREN ROY
NALBARI HARI MANDIR
N.T. ROAD
NALBARI
DIST. NALBARI

22:SRI GIRISH TAHBILDAR
S/O LATE POHARURAM TAHBILDAR
NALBARI HARI MANDIR
N.T. ROAD
NALBARI
DIST. NALBARI

23:SRI AJAY DAS
S/O LATE ARUN KUMAR DAS
NALBARI HARI MANDIR
N.T. ROAD
NALBARI
DIST. NALBARI

24:SRI SUKUMAR SARMA
S/O LATE UPENDRANATH SARMA
NALBARI HARI MANDIR
N.T. ROAD
NALBARI
DIST. NALBARI

25:SRI PAKAJ BARMAN
S/O LATE HAREN BARMAN
NALBARI HARI MANDIR
N.T. ROAD
NALBARI
DIST. NALBARI

26:SRI TAPESWAR DAS
S/O LATE KESAB DAS
NALBARI HARI MANDIR
N.T. ROAD
NALBARI
DIST. NALBARI

27:SRI SARBESWAR KALITA
S/O LATE BHABIT KALITA
NALBARI HARI MANDIR
N.T. ROAD
NALBARI
DIST. NALBARI

28:SRI NARESWAR KALITA
S/O LATE SAMBARU KALITA
NALBARI HARI MANDIR
N.T. ROAD
NALBARI
DIST. NALBARI

29:SRI PARESH BARMAN
S/O LATE UMESH CH. BARMAN
NALBARI HARI MANDIR
N.T. ROAD
NALBARI
DIST. NALBARI

30:SRI GANESH TAMULY
S/O LATE NABIN TAMULY
NALBARI HARI MANDIR
N.T. ROAD
NALBARI
DIST. NALBARI

31:DIPAK BARUAH
S/O LATE ANANTA BARUAH
NALBARI HARI MANDIR
N.T. ROAD
NALBARI
DIST. NALBAR

Advocate for the Petitioner : MR D CHOUDHURY

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

04.10.2023

Heard Mr. D. Choudhury, learned counsel appearing for the petitioner in WP(C) No.5013/2023. Also heard Mr. S. Dutta, learned senior counsel assisted by Mr. S. Dutta, learned counsel appearing for the writ petitioners in WP(C) No.5790/2023. Mr. D. Saikia, learned Advocate General, Assam assisted by Mr. D. Nath, learned Senior Government Advocate, Assam has appeared on behalf of the respondent Nos.1 to 4. Mr. B. Choudhury, learned counsel is present on behalf of respondent No.6 in WP(C) No.5013/2023 and Ms. P. Barua, learned counsel is present on behalf of respondent Nos.7, 8, 11, 20 and 30 in WP(C) No.5013/2023.

In both these writ petitions the notification dated 22.07.2023, by means of which, the District Commissioner of Nalbari had constituted a committee to run and manage the affairs of the "Sri Sri Nalbari Hari Mandir", has been put under challenge *inter-alia* contending that the impugned notification is in clear violation of Article 26(b) and (d) of the Constitution of India. The learned counsel for the petitioners have also prayed for an interim order suspending the operation of the notification dated 22.07.2023 thereby restoring the office bearers of the earlier Managing Committee who are the petitioners in WP(C) No.5790/2023.

The learned senior counsel Mr. S. Dutta has vociferously argued that the District Commissioner of Nalbari did not have the authority or jurisdiction under the law to interfere in the affairs of a religious denomination such as the "Hari

Mandir" of Nalbari and therefore, the impugned order is per se illegal and hence liable to be interfered with by this Court. Joining the above submissions, Mr. D. Choudhury, learned counsel for the petitioner in WP(C) No.5013/2023 has argued that his client is a devotee of "Hari Mandir" and therefore, is entitled to ensure that a free and fair election, as per the provisions of the constitution of the Mandir Committee, is held for electing a new Managing Committee of the Sri Sri Nalbari Hari Mandir. However, in view of the action initiated by the District Commissioner, Nalbari, more particularly, induction of new members, the aforesaid exercise is unlikely to take place. Mr. D. Choudhury has, therefore, prayed for an interim order from this Court constituting an ad-hoc committee so as to oversee the holding of the election by restraining the District Administration from interfering in the matter.

Mr. D. Saikia, learned Advocate General, Assam, on the other hand, has invited the attention of this Court to the materials available on record including the resolution dated 14.05.2023 adopted in a meeting of the "Sri Sri Nalbari Hari Mandir Committee" to contend that the term of the earlier Managing Committee, which was elected for a period of three years in the year 2018, had expired. Notwithstanding the same, neither any action has been taken for holding fresh AGM/election of the Committee nor has the earlier committee submitted accounts since the time they assumed office as a result of which there was anarchy prevailing in the temple. Noticing such financial irregularities and other anomalies in the functioning of the Mandir Committee, the District Commissioner was compelled to intervene in the matter on receipt of public complaints and with the support and participation of a large number of devotees, by issuing the impugned notification dated 22.07.2023, the earlier

committee was dissolved and a new committee was formed so as to run the affairs of the temple till such time, a regularly elected Managing Committee assumes office. Mr. Saikia has argued that the District Administration did not have any participation or role in the matter of carrying out religious as well as the administrative activities of the temple since there were other devotees including the former General Secretary of the Executive Committee, who was a part of the said committee. However, by referring to the resolution adopted in the special general meeting of the committee held on 12.08.2023, Mr. Saikia submits that a 3 Member Committee of devotees has since been constituted and they are presently running and managing the affairs of the Mandir Committee, without any involvement of any public authority.

Mr. Saikia has also invited the attention of this Court to the notification dated 19.09.2023 issued by the District Commissioner, Nalbari to contend that the date of election of the Managing Committee of the "Hari Mandir" has now been fixed on 29.10.2023 and a detail schedule of election, including the dates of submission of nomination, scrutiny etc. has been laid down by the District Commissioner. Under the circumstances, submits Mr. Saikia if any interim order, as prayed for, is passed at this stage, then the same would not only delay the election of a new Managing Committee of the "Hari Mandir" but would also create larger problems in administering the Temple. As such, the learned Advocate General, Assam has opposed the prayer for interim relief made in these cases.

I have considered the submissions made at the bar and have also gone through the materials available on record.

It is not in dispute that the term of earlier Managing Committee had

expired in the month of August, 2022 and therefore, even if the notification dated 22.07.2023 is suspended by this Court by an interim order, even then, they cannot come back to office and hold the elections of the new Executive Committee. Furthermore, it is apparent from the materials on record that, by the resolution adopted in the special general meeting held on 12.08.2023, the 3 Member Committee headed by Sri Jayanta Malla Baruah, the local MLA and Minister, has taken over the functions of adhoc Management Committee till the election is held and the election of the Committee has also been duly notified by the District Commissioner by appointing Election Officer, Assistant Returning Officer and Presiding Officer. The three member Committee has apparently superseded the Committee constituted earlier by the notification dated 22.07.2023. However, the resolution dated 12.08.2023 is not under challenge. Under the circumstances, I find force in the submissions of Mr. Saikia that issuance of an interim order at this stage would further delay the process of election of the Managing Committee of the temple. Situated thus, the prayer for interim relief is hereby rejected.

It is, however, provided that the District Commissioner, Nalbari would ensure that the election of the Managing Committee, as notified on 19.09.2023, be held as per schedule and in a free and fair manner, by adhering to the provisions of the constitution of "Sri Sri Hari Mandir" and the results thereof be declared as per the schedule. However, the results of the AGM/election would be subject to further orders that may be passed in these writ petitions.

Issue notice in WP(C) No.5790/2023.

Since the parties are already represented, no formal notice is required to be sent in this case. However, extra copies of the writ petition, requisite in

numbers, be furnished to the learned departmental counsel so as to enable them to obtain instruction and file affidavit, if so advised.

Office to list these cases together for admission hearing on 10.11.2023 as fixed items.

JUDGE

Comparing Assistant