

GAHC010104422023



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

Case No. : PIL/41/2023

SWAHID MUKUNDA KAKATI CIVIL HOSPITAL PROTECTION COMMITTEE
AND 3 ORS
REPRESENTED HEREIN BY ITS PRESIDENT,
NAMELY DR. NARAYAN CHANDRA SARMA, AGED ABOUT 73 YEARS,
SON OF LATE KUSHAL CH. SARMA,
OFFICE ADDRESS- KHATABARI, WARD NO. 2,
P.S.- NALBARI, DISTRICT- NALBARI (ASSAM),
PIN- 781335.

2: JITENDRA KUMAR JAIN
SON OF LATE MOHAN LAL JAIN

WARD NO. 7
NEAR BSNL OFFICE

DISTRICT- NALBARI
PIN- 781335

ASSAM.

3: SUREN RAJBONGSHI
SON OF SUKHNA RAJBONGSHI

NAMATI
NALBARI
DISTRICT- NALBARI

PIN- 781337
ASSAM.

4: NAMITA DAS
DAUGHTER OF UMESH CHANDRA DAS

RESIDENT OF NALBARI

P.O. AND P.S.- NALBARI

DISTRICT- NALBARI
PIN- 781335

ASSAM

VERSUS

UNION OF INDIA AND 4 ORS
DEPARTMENT OF HEALTH AND FAMILY WELFARE,
GOVT. OF INDIA,
REPRESENTED HEREIN BY ITS HEALTH SECRETARY,
ADDRESS- CABINET SECRETARIAT,
RAISINA HILL, NEW DELHI,
PIN- 110001.

2:DEPARTMENT OF HEALTH AND FAMILY WELFARE
GOVT. OF ASSAM
REPRESENTED HEREIN BY ITS PRINCIPAL SECRETARY TO THE GOVT. OF
ASSAM

ADDRESS- 3RD FLOOR
CM BLOCK
ASSAM SECRETARIAT

DISPUR
PIN- 781006.

3:THE DEPUTY COMMISSIONER
NALBARI DISTRICT (GOVT. OF ASSAM)
OFFICE OF THE DEPUTY COMMISSIONER
NALBARI -BARAMA ROAD
NALBARI

ASSAM
PIN- 781335.

4:NALBARI MEDICAL COLLEGE AND HOSPITAL
REPRESENTED HEREIN BY ITS PRINCIPAL-CUM-CHIEF
SUPERINTENDENT OF NALBARI MEDICAL COLLEGE AND HOSPITAL

DAKHIN GAON
GHOGRAPAR

NALBARI
DISTRICT- NALBARI

ASSAM
PIN- 781350.

5:SWAHID MUKUNDA KAKATI CIVIL HOSPITAL
SITUATED AT NALBARI

REPRESENTED HEREIN BY THE JOINT DIRECTOR
PUBLIC HEALTH DEPARTMENT NALBARI

BARAGOPAL CHOWK
SMK CIVIL HOSPITAL ROAD

DIST.- NALBARI
ASSAM
PIN- 781335

Advocate for the Petitioner : MR. S CHAMARIA

Advocate for the Respondent : DY.S.G.I.

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

**Date : 21-07-2023
(Sandeep Mehta, CJ)**

1. The instant writ petition filed under Article 226 of the Constitution of India, styled to be Public Interest Litigation, has been preferred by the petitioner Committee seeking the following directions:

“1. A writ in the nature of Mandamus directing the respondent No. (2) and (5) not to amalgamate the "Swahid Mukunda Kakati Civil Hospital, Nalbari" with "Nalbari Medical College and Hospital".

2. A writ in the nature of Mandamus directing the respondent (2) and (5) to maintain the earlier status of the Swahid Mukunda Kakati Civil Hospital, Nalbari" and allow to make it functional as a separate unit.

3. A writ in the nature of Certiorari thereby setting aside the Notification dated 28.04.2022 issued by the respondent No. (2) for amalgamation of "Swahid Mukunda Kakati Civil Hospital, Nalbari" with "Nalbari Medical College and Hospital".

2. The bone of contention of the petitioners is that by amalgamation of Swahid Mukunda Kakati Civil Hospital (in short, SMK Civil Hospital), Nalbari, with Nalbari Medical College and Hospital, the medical facilities being provided to the people of the locality at the SMK Civil Hospital will be severely truncated and compromised thereby acting to the deterrence of the public at large. Learned counsel Mr. S. Chamaria, representing the petitioners contends that though after the amalgamation emergency services and child care services at the SMK Civil Hospital will be continued but the secondary medical services have been discontinued on the premise that a Cancer Hospital is proposed to be set up in one section of the establishment of SKM Hospital. It is also submitted that after the amalgamation, maternity facilities will also be stopped at the SMK Civil Hospital causing great hardship to the people at large and, hence, the proposal to amalgamate the SMK Civil Hospital with the Nalbari Medical College and Hospital deserves to be struck down. He further submits that the action so being taken is in gross contravention of Clause 3.3.2 of the National Health Policy, 2017, and the Indian Public Health Standards, 2022.

3. The respondents have filed affidavit-in-opposition wherein it has been specifically pleaded that the petitioners have not filed the instant PIL for *bona fide* objectives. At paragraph 4 of the affidavit, it is asserted that the decision of amalgamation has been taken not only for the Medical College at Nalbari but for all new Medical Colleges in the districts of Assam. When a Medical College being a tertiary facility is set up in a district, the health service facilities will be upgraded manifold as compared to the health care facilities being provided in the civil hospital which is secondary facility. It is further stated that the order of amalgamation of the SMK Civil Hospital with the Nalbari Medical College has already been notified way back

on 28.04.2022.

At paragraph 7 of the affidavit it is stated that as per the Medical Council guidelines there are required to be adequate number of IPD and OPD patients, failing which it becomes difficult to get recognition for the Medical College and Hospital and, hence, parallel functioning of Medical College and Hospital and Civil Hospital nearby may hamper the recognition process mandatorily required for the setting up of the Medical College. It has also been stated by the respondents that the SMK Civil Hospital will not stop functioning and, instead, it will be converted to First Referral Unit (FRU) and, moreover, a Cancer Hospital will also be established at the same site which will be greatly beneficial for the people of the district. It is also stated that both secondary and tertiary care providers, i.e. the SMK Civil Hospital and the Nalbari Medical College and Hospital will work in tandem in the interest of public service.

4. Mr. D. Saikia, learned Advocate General, Assam, representing the respondents has vehemently and fervently contended that the State has taken the decision to amalgamate Civil Hospitals in 12 districts where new Medical College and Hospitals are being established and, as such, the petitioners have no foundation to question the decision of the State to amalgamate the SMK Civil Hospital with the Nalbari Medical College and Hospital. He further submits that the newly proposed Medical College site is at a distance of only 10 Kilometres from the SMK Civil Hospital and that it will benefit the people of a larger area with better facilities than those being provided at the SMK Civil Hospital. He has further pointed out that the petitioner Committee is not a registered body and, hence, it has no locus to bring in the instant writ petition.

5. We have given our thoughtful consideration to the submissions advanced at the Bar and have gone through the material placed on record.

6. First and foremost, we would like to take note of the amalgamation order dated 28.04.2022 by the effect whereof the Nalbari Medical College and Hospital and the SMK Civil Hospital have been amalgamated. The said order of amalgamation was

passed more than a year before the instant PIL has been filed by the petitioners. Otherwise also, having gone through the averments made by the petitioners in the petition and the affidavit-in-opposition filed by the respondents, we are of the firm view that setting up of Medical College and Hospital at Nalbari is definitely going to be much more beneficial to the citizens of a larger area, because they will get better and specialised medical facilities within the district. The short distance of 10 Kilometres between the two establishments cannot be considered to be a impediment in the way of the needy patients to avail better medical facilities bound to be provided at the Medical College and Hospital. Not only this, with the setting up of the Medical College the aspirants from the district will get opportunity to pursue medical education as well. Having considered the National Health Policy, 2017 and the Indian Public Health Standards, 2022, heavily relied upon by Mr. Chamaria, we are of the firm view that the action of the respondents in setting up of the Medical College and Hospital at Nalbari and to amalgamate the SMK Civil Hospital, Nalbari, with the Medical College in no manner infringes upon any conditions of the policy or standards. It is the affirmative stand of the respondents in the affidavit-in-opposition that the SMK Civil Hospital is not being closed in its entirety and the petitioners themselves have also admitted that the emergency facilities and child care facilities are being continued to be provided in the SMK Civil Hospital. Setting up of upgraded and specialised medical facilities at a distance of 10 Kilometres cannot be construed to be creating any hardship, which can persuade this Court to interfere with the well-reasoned decision of the State Government to amalgamate the Civil Hospital with the Medical College which will be equipped with better medical facilities and infrastructures. If the said two institutions are not amalgamated, the recognition required for operating the Medical College and Hospital may get stuck at the end of the Medical Council and the same would be gravely detrimental to the interest of the citizens at large.

7. As a consequence, we are not inclined to interfere in this matter by exercising extra-ordinary jurisdiction conferred upon this Court by Article 226 of the Constitution

of India. Hence, the Public Interest Litigation fails and is dismissed as being devoid of merits.

The *ad interim* order passed on 18.05.2023 stands vacated.

No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant