

GAHC010217182023



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

Case No. : WP(C)/5695/2023

NIKHILESH GOSWAMI AND 5 ORS.
SON OF SRI HARINARAYAN GOSWAMI,
RESIDENT OF HOUSE NO. 2, ROHINI DAS PATH,
MATHGHARIA, P.O. AND P.S.- NOONMATI,
IN THE DISTRICT OF KAMRUP (METRO),
GUWAHATI, PIN- 781020, ASSAM.

2: DR. BASANTA KUMAR BHUYAN
FORMER PRINCIPAL
GURUKUL GRAMMAR SENIOR SECONDARY SCHOOL

SON OF LATE PASUPATI BHUYAN

RESIDENT OF HOUSE NO. 19
12 WEST BYE LANE

RG BAROOAH ROAD (RAJAT KAMAL PATH)

ZOOROAD TINIALI
P.O.- ZOOROAD

P.S.- GITANAGAR
IN THE DISTRICT OF KAMRUP(METRO)

GUWAHATI
ASSAM
PIN- 781024.

3: KAPIL DEVA GOSWAMI
SON OF SRI LAKSHMI NARAYAN GOSWAMI

RESIDENT OF BALAJI HOUSE
FLAT NO. 5

BANALAXMI PATH
BONGAON
BELTOLA

P.O.- BELTOLA
P.S.- BASISTHA

IN THE DISTRICT OF KAMRUP(METRO)

GUWAHATI
PIN- 781028
ASSAM.

4: SMITINALA KONWAR
DAUGHTER OF LATE INDIBOR KONWAR

RESIDENT OF MOTHER TERESA ROAD

HEM BARUAH ROAD
P.S.- GEETA NAGAR

P.O.- ZOO ROAD
GUWAHATI

IN THE DISTRICT OF KAMRUP(METRO)

PIN- 781024
ASSAM.

5: SANGEETA TALUKDAR
DAUGHTER OF SRI SAMIRAN CHANDRA DAS

RESIDENT OF SIBA NATH GOGOI PATH

HOUSE NO. 33-A
NEAR PANJABARI UCO BANK
PANJABARI

IN THE DISTRICT OF KAMRUP(METRO)

GUWAHATI
PIN- 781037
ASSAM.

6: BARASHA KALITA
DAUGHTER OF LATE ANANTA RAM KALITA

RESIDENT OF RAJGARH ROAD

BYE LANE NO. 4

HOUSE NO. 7(B)
GUWAHATI
P.O.- SILPUKHURI

P.O.- CHANDMARI
IN THE DISTRICT OF KAMRUP(METRO)

PIN- 781003
ASSAM

VERSUS

THE STATE OF ASSAM AND 7 ORS.
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM,
DEPARTMENT OF WOMEN AND CHILD DEVELOPMENT,
JANATA BHAWAN, DISPUR, GUWAHATI,
PIN- 781006, ASSAM.

2:ASSAM STATE COMMISSION FOR WOMEN
REPRESENTED BY ITS CHAIRMAN

BELTOLA TINIALI

GUWAHATI
ASSAM
PIN- 781028.

3:THE MEMBER SECRETARY
ASSAM STATE COMMISSION FOR WOMEN
BELTOLA TINIALI
GUWAHATI
ASSAM

PIN- 781028.

4:LEGAL ADVISORY COMMITTEE
ASSAM STATE COMMISSION FOR WOMEN
BELTOLA TINIALI
GUWAHATI
ASSAM

PIN- 781028.

5:SANDHYA RANI HAZARIKA
RESIDENT OF HOUSE NO. 66

JAYANAGAR

MALIGAON
IN THE DISTRICT OF KAMRUP(METRO)

GUWAHATI
ASSAM
PIN- 781011.

6:MONALISA DAS
RESIDENT OF HARE KRISHNA APARTMENT

2ND FLOOR
NARIKALBASTI
GUWAHATI

IN THE DISTRICT OF KAMRUP(METRO)

ASSAM
PIN- 781011.

7:BHANU DAS
RESIDENT OF HOUSE NO. 36
NAMGHAR PATH

LAKHMINAGAR
HATIGAON
GUWAHATI

IN THE DISTRICT OF KAMRUP(METRO)

ASSAM
PIN- 781038.

8:LIPIKA KALITA DAS
C/O- SABIN DAS

HOUSE NO. 50
NAWAPARA
GARIGAON

FOREST SCHOOL SLUICE GATE
JALUKBARI

GARIGAON
IN THE DISTRICT OF KAMRUP(METRO)

ASSAM

PIN- 781012

Advocate for the Petitioner : MR. U K NAIR

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 27/09/2023

Heard Mr. U.K. Nair, learned senior counsel assisted by Mr. S. P. Sharma, learned counsel for the writ petitioners. Also heard Mr. H. Sarma, learned Additional Senior Government Advocate, Assam, appearing on behalf of the respondent nos. 1 to 4.

This writ petition has been filed jointly by the 6 (six) petitioners assailing the maintainability of the proceeding registered as ASCW Case No. 12/2023 before the Assam State Commission for Women, Beltola, Assam, *inter-alia* contending that the Assam State Commission for Women (ASCW) does not have the authority or jurisdiction under the law to entertain the issues raised in the complaint filed by the private respondents.

By referring to the provisions of section 10 of the Assam State Commission for Women Act, 1994 as well as the decision rendered by the Hon'ble Supreme Court of India in the case of ***Bhabani Prasad Jena Vs. Convenor Secretary, Orissa State Commission for Women and others*** reported in **(2010) 8 SCC 633**, Mr. Nair submits that law is firmly settled that the ASCW does not have any adjudicatory power and cannot entertain issues which are beyond the ambit of clause 10 of the Act. Notwithstanding the same and despite categorical objection raised by the writ petitioners questioning the maintainability of the proceedings, the learned Commission, submits Mr. Nair, has not passed any order on the issue of maintainability of the proceeding and on the contrary, had proceeded with the matter from time to time, thus, causing serious harassment and prejudice to the writ petitioners. It is also the submission of Mr. Nair that the service of the complainants were terminated on account of misconduct but in order to secure an order of reinstatement in service, they had approached the Commission by taking up grounds, which were not even urged by the girl child or her parents, before any forum.

Responding to the above, Mr. H. Sarma, learned Additional Senior Government Advocate,

Assam, submits that since the petitioners have questioned the jurisdiction of the ASCW to entertain the proceeding, an order be passed by this Court directing the learned Commission to first decide on the question of jurisdiction and pass a speaking order therein. Mr. Nair, learned counsel for the writ petitioners has agreed to such a recourse.

In view of the above, without expressing any further opinion on the issues raised in this writ petition, this writ petition is being disposed of by providing that the learned ASCW shall take up the plea of maintainability of the proceeding raised by the writ petitioners, first in point of time and pass a speaking order in respect thereof before proceeding any further in the matter.

The Commission may fix a firm date of hearing on the question of maintainability by issuing prior notices to both the sides. It is only after the question of maintainability is decided that any further be passed in the matter, in accordance with law. The question of maintainability of the proceeding be decided as expeditiously as possible but not later than 60(sixty) days from the date of hearing to be fixed in terms of the order of this Court.

If the writ petitioners continued to remain aggrieved even thereafter, it would be open for them to approach this Court by filing fresh writ petition(s).

With the above observations, this writ petition stands disposed of.

JUDGE

sukhamay

Comparing Assistant