

GAHC010199402022



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

Linked Case : **I.A.(Civil) No. 3292/2022**
In WP(C) No. 6571/2022

SRI SRI ATHKHELIA NAMGHAR AND 2 ORS.
A RELIGIOUS INSTITUTION
LOCATED AT BOSA GAON
P.O.-PULIKAITONI
P.S.-GHILADHARI
DIST-GOLAGHAT
ASSAM
REPRESENTED BY

2: KHAGENDRA NATH HAZARIKA
PRESIDENT OF SRI SRI ATHKHELIA NAMGHAR PARISCHALANA
COMMITTEE
S/O LATE TUARAM HAZARIKA
BORKACHARI
P.O.-BORHOLLA
P.S.-GHILADHARI
DIST-GOLAGHAT
ASSAM

3: CHAKREN SAIKIA
SECRETARY OF SRI SRI ATHKHELIA NAMGHAR PARISCHALANA
COMMITTEE
S/O LATE BHOLARAM SAIKIA
NO. BIJO NAGAR
RAJABARI
P.O.-RAJABARI
PIN-14
P.S.-LECHUBARI
DIST-JORHAT
ASSAM
VERSUS

THE STATE OF ASSAM AND 15 ORS.

REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM
DISPUR
GUWAHATI-781006

2:DEPUTY COMMISSIONER CUM DISTRICT MAGISTRATE
GOLAGHAT
P.O.-GOLAGHAT
DIST-GOLAGHAT-785621
ASSAM

3:ASSISTANT COMMISSIONER
IN THE OFFICE OF THE DEPUTY COMMISSIONER
GOLAGHAT
P.O.-GOLAGHAT
DIST-GOLAGHAT-785621
ASSAM

4:CIRCLE OFFICER
GOLAGHAT
P.O.-GOLAGHAT
DIST-GOLAGHAT-785621
ASSAM

5:ADDITIONAL DISTRICT MAGISTRATE
GOLAGHAT
P.O.-GOLAGHAT
DIST-GOLAGHAT-785621
ASSAM

6:KHAGESWAR BORA
S/O LATE BOGORA CHUTIA
HORUKACHARI
BAMUNCHUK
P.O.-PULIKAITONI
P.S.-GHILADHARI
DIST-GOLAGHAT-785631
ASSAM

7:TONKESWAR SAIKIA
S/O DURGESWAR SAIKIA
BEBEJIA GAON
P.O.-PULIKAITONI
P.S.-GHILADHARI
DIST-GOLAGHAT-785631
ASSAM

8:HOREN BORA
S/O INDRESWAR BORA
MOKRONGGHABI GAON
P.O.-PULIKAITONI
P.S.-GHILADHARI
DIST-GOLAGHAT-785631
ASSAM

9:CHANDRA PATHAK
S/O LATE DEOKAN PATHAK
FREE SIMPLE GRANT
P.O.-BORHOLLA
P.S.-GHILADHARI
DIST-GOLAGHAT-785631
ASSAM
10:ASHIM KUMAR BORA @ ASHIM BORA
S/O DRUNAKANTA BORA
BEBEJIA GAON
P.O.-PULIKAITONI
P.S.-GHILADHARI
DIST-GOLAGHAT-785631
ASSAM
11:NITUL SAIKIA
S/O PUNA SAIKIA
NANGAL GAON
P.O.-BORHOLA
P.S.-GHILADHARI
DIST-GOLAGHAT-785631
ASSAM
12:NAREN BORA
S/O KHAGESWAR BORA
HORUKACHARI
BAMUNCHUK
P.O.-PULIKAITONI
P.S.-GHILADHARI
DIST-GOLAGHAT-785631
ASSAM
13:PURNA BORA
S/O LATE JOYGURAM BORA
BAMUN GAON
KACHARIKURI
P.O.-EKRANI
P.S.-GHILADHARI
DIST-GOLAGHAT-785631
ASSAM
14:DRUNOKANTA BORA @ DURNABORA
S/O LATE BAPURAM BORA
BEBEJIA GAON
P.O.-PULIKAITONI
P.S.-GHILADHARI
DIST-GOLAGHAT-785631
ASSAM
15:JUGEN SAIKIA
S/O LATE BORPITO SAIKIA
NO. 2 KAKODONGA HABI GAON
11 NO. BLOCK

P.O.-URONGIAL
P.S.-BOHOLA
DIST-JORHAT
ASSAM
16:CHANDRA SAIKIA
S/O LATE POWAL SAIKIA
P.O.-BORHALLA
VILL-BORKACHARIGAON
P.S.-GHILADHARI
DIST-GOLAGHAT
PIN-785631

Advocate for : MR. R C SAIKIA
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 15 ORS.

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

20.01.2023

Heard Shri K. Goswami, learned Senior Counsel for the applicants -petitioners. Also heard Shri D.K. Sharma, learned Addl. Senior Government Advocate, Assam for the State respondents whereas Shri M. Nath, learned Senior Counsel has appeared for the respondent nos. 6 to 16.

The instant Interlocutory Application has been filed pursuant to a liberty granted by the Hon'ble Division Bench in WA No. /346/2022 dated 02.11.2022. The aforesaid writ appeal was preferred by the applicants-writ petitioners against an interim direction passed by the learned Single Judge dated 21.10.2022 whereby the Deputy Commissioner, Golaghat was directed to enquire and submit a report before the Court as to in what manner the election to the Athkhelia Namghar was held. The petitioners were also directed to render necessary cooperation with the Deputy Commissioner so that the Deputy

Commissioner shall *privy* to the records of the election that was held.

It is the case of the applicants-petitioners that the Deputy Commissioner, Golaghat is an interested party and the litigation itself was instituted against actions taken by the said Deputy Commissioner, Golaghat, which were prejudicial to the interest of the petitioners. It is seen that though the Hon'ble Division Bench did not enter into the merits of the writ appeal, it was clarified that the rights of the petitioners shall not be prejudiced in approaching the learned Single Judge by way of an appropriate Interlocutory Application. It is in pursuance to the said clarification that the present Interlocutory Application has been filed.

At the outset, Shri Goswami, the learned Senior Counsel has fairly submitted that the applicants-petitioners are not opposed to holding an enquiry with regard to the manner of elections to the Athkhelia Namghar. The opposition is only with regard to the person by whom the enquiry was directed to be held namely the Deputy Commissioner, Golaghat. The learned Senior Counsel fairly submits that the petitioners would have no grievance if such an enquiry is directed to be made by any other authority.

Shri M. Nath, learned Senior Counsel for the contesting respondents has however submitted that there was absolutely no error on the part of the Deputy Commissioner in making the enquiry. However, in the facts and circumstances of this case, Shri Nath, the learned Senior Counsel submits that he would not be opposed to a fresh enquiry to be held by any other authority.

Shri D.K. Sharma, learned Additional Senior Government Advocate, Assam submits that in the earlier enquiry though the applicants - petitioners were directed to render cooperation, they did not render the necessary cooperation.

Be that as it may, the learned State Counsel is also agreed in principle that a fresh enquiry may be held by any other person to remove from the minds of the contesting parties that any prejudice would be caused to either of them.

In that view of the matter, the order dated 21.10.2022 passed by this Court in this Writ Petition being WP (C)/ 657/2022 is modified to the extent that the enquiry to be held as to the manner by which the elections to the Athkhelia Namghar in the district of Golaghat was held be made by the Commissioner, Upper Assam Division, Jorhat. All the contemporaneous documents pertaining to the elections be handed over to the said authority and the authority would make an endeavour to complete the enquiry expeditiously and preferably within a period of 2 (two) months from today. While holding the enquiry, the said Commissioner would ensure that affected parties are given an opportunity of hearing and also to produce all necessary documents.

Let this case be listed after 2 (two) months. In case the report is prepared prior to two months, liberty is given to the parties through the learned Government Counsel to make a mention for listing of this matter.

In view of the aforesaid directions, the enquiry made by the Deputy Commissioner dated 21.10.2022 has become otiose.

JUDGE

Comparing Assistant