

GAHC010310492019



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

Case No. : PIL 78/2019

1: BANASHREE GOGOI
D/O- LT. GOLAP CH. GOGOI, R/O- 1B DISHA ENCLAVE, MANIK NAGAR, P.S.
DISPUR, GHY, PIN- 781005
VERSUS
1: UNION OF INDIA AND 7 ORS.
TO BE REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF HOME
AND POLITICAL, NEW DELHI-01
2: SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF INFORMATION AND TECHNOLOGY
GOVT. OF INDIA
NEW DELHI-01
3: SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF TELECOMMUNICATION
NEW DELHI-01
4: THE STATE OF ASSAM
REP. BY THE CHIEF SECY. TO THE GOVT. OF ASSAM
ASSAM SECRETARIAT
DISPUR
GHY-06
5: THE ADDL. CHIEF SECY. TO THE GOVT. OF ASSAM
HOME AND POLITICAL DEPTT.
ASSAM SECRETARIAT
DISPUR
GHY-06
6: THE DIRECTOR GENERAL OF POLICE
ASSAM
POLICE HEAD QUARTER
ULUBARI
GHY-07
7: THE COMMISSIONER OF POLICE
GUWAHATI CITY PANBAZAR
GHY-01
8: THE DY. COMMISSIONER
KAMRUP (M)

GHY-01

ASSA

Advocate for the Petitioner : MR K K MAHANTA

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

Linked Case : PIL 77/2019

1:DEVA KANYA DOLEY
D/O- MAHESH DOLEY
R/O- GOGAMUKH
P.O. KHURACHUK
PIN- 787034
DIST.- DHEMAJI
ASSAM

VERSUS

1:THE STATE OF ASSAM AND 2 ORS.
(REP. BY THE CHIEF SECY.) TO THE GOVT. OF ASSAM
DISPUR
GHY-6
DIST.- KAMRUP (M)
ASSAM

2:THE ADDL. CHIEF SECY. TO THE GOVT. OF ASSAM
DEPTT. OF HOME AND POLITICAL (A)
DISPUR
GHY-6
DIST.- KAMRUP (M)
ASSAM

3:THE UNION OF INDIA
REP. BY THE SECY. TO THE GOVT. OF INDIA
MINISTRY OF HOME AFFAIRS
NEW DELHI

Advocate for the Petitioner : SWATI. B. BARUAH (TG)
Advocate for the Respondent : GA
ASSAM

Linked Case : PIL 79/2019

1:AJIT KR. BHUYAN
S/O- LT. J. N. BHUYAN
R/O- 505
AKANKHYA MANSION
SHIV MANDIR PATH
P.O. KHANAPARA
GHY.- 781022.

VERSUS

1:THE STATE OF ASSAM AND 3 ORS.
REP. BY ITS ADDL. CHIEF SECY.
GOVT. OF ASSAM (HOME AND POLITICAL)
DISPUR
GHY.-781006.

2:THE DY. SECY.
GOVT. OF ASSAM (HOME AND POLITICAL)
DISPUR
GHY.-06.

3:THE UNION OF INDIA
REP. BY THE SECY.
MINISTRY OF COMMUNICATIONS (DEPTT. OF TELECOMMUNICATIONS)
SANCHAR BHAWAN
20 ASHOKA ROAD
NEW DELHI- 110001.

4:THE SR. DY. DIRECTOR GENERAL (AS)
MINISTRY OF COMMUNICATIONS (DEPTT. OF TELECOMMUNICATIONS)
SANCHAR BHAWAN
20 ASHOKA ROAD
NEW DELHI- 110001.

Advocate for the Petitioner : MR A C BORBORA
Advocate for the Respondent : GA
ASSAM

Linked Case : PIL 76/2019

1:RANDEEP SHARMA
ADVOCATE
GAUHATI HIGH COURT

S/O- LT. BHUPEN SHARMA
R/O- AMAYAPUR HOUSE
H.NO. 2
NEW SARANIA
GHY-03

DIST.- KAMRUP (M)
ASSAM

VERSUS

1:THE STATE OF ASSAM AND 2 ORS.
REP. BY THE CHIEF SECY.
GOVT. OF ASSAM
DISPUR
GHY-06

2:THE STATE OF ASSAM
REP. BY THE ADDL. CHIEF SECY.
HOME AND POLITICAL DEPTT.
GOVT. OF ASSAM
DISPUR
GHY-06

3:THE DGP
ASSAM POLICE HEADQUARTERS
DR. B.K.KAKATI ROAD
ULUBARI
GHY-07

Advocate for the Petitioner : MR. P PHUKAN
Advocate for the Respondent : GA
ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANOJIT BHUYAN
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

19.12.2019

(Manojit Bhuyan, J)

1. These four Public Interest Litigations (PILs) are listed today in view of the orders of this Court dated 17.12.2019. The State respondents were required to place on record the materials which

weighed with them in continuing with the suspension of Internet/Mobile Data services. An affidavit has been filed on behalf of the respondent no.5 this morning i.e. 19.12.2019, which is available in the records of the case.

2. We take up these matters today for consideration of the interim prayers in the PILs, having regard to the affidavit of the respondent no.5 as well as with regard to the attendant circumstances.

3. Briefly stated, the four PILs have put challenge to the promulgation of Notifications, starting with the one issued on 11.12.2019 and the subsequent Notifications of the Government of Assam in the Political (A) Department, whereby in view of the then prevailing protests in different parts of State of Assam and amid apprehensions that such protests would intensify and snow-ball to adverse law and order situation in the State threatening public safety, the provisions of section 5(2) of the *Indian Telegraph Act, 1885*, read with the *Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017* was invoked prohibiting Mobile Internet/Data Service of all Mobile Service Providers for the next 24 hours in the 10 (ten) districts of Assam, as specified therein. In the subsequent Notifications the prohibition was extended to cover the entire State of Assam. Although in course of time and by the subsequent Notifications relaxation was made with regard to Broadband Internet Services, however, the suspension on Mobile Internet Service was not recalled, rather allowed to continue.

4. This Court had passed order on 17.12.2019 in one of the cases i.e. PIL 78/2019 by making observations to the following effect :

“2. Mr. K.K. Mahanta and Mr. U.K. Nair have impressed on the Court that although in the last three days it is absolutely visible that the conditions are normal, only demonstrations are being held in peaceful manner, there has not been any untoward incident in Guwahati which might be of violent nature, traffic has not been disrupted, working in the public offices has not been disrupted and yet the situation has not been pragmatically reviewed by the respondents. The suspension of internet and mobile data services continues. This is causing freeze in the entire functioning in the city, and in the State.

3. It has been impressed on the Court that even electricity supply has been snapped to certain houses of the lawyers because pre-paid meters have been installed, which can only be charged through internet. It has been impressed on the Court that the functioning of the Court has been seriously interfered with in so much as the cause list cannot be accessed without provision of internet/mobile data services. It has been pointed out that all the business establishments are only relying on data that flows through internet. Under the circumstances, none of the business establishments is able to transact business causing serious disruption in normal living of the citizens in the area. It has been pleaded that although curfew has been

relaxed in a phased manner, so much so today there is no curfew, however, no due consideration has been given to lift the suspension of internet and mobile data services. It has been impressed on the Court that the credit card and debit cards cannot be used. Even household essentials cannot be purchased. There are long queues outside ATM Kiosks. It has been pleaded that on account of such unreasonable action of the respondents, lives of all the residents of the area have been seriously affected. Even children are not able to fill forms for admission to the next course.

4. Mr. D. Mozumder and Mr. Keyal have informed the Court that broadband services has been restored today. It has been stated that review of the situation has been done. Mr. Mozumder contends that the order passed subsequent to passing of Annexure-I would be brought to the notice of the Court.

5. Having considered all the aspects of the case and in particular the dependence of the citizens on internet services which on suspension has virtually resulted in serious disruption of the lives of the residents, we deem it just and proper to observe that the respondents on considering inputs from various sources, may take a considered decision for restoration of mobile data and internet services etc. during the afternoon hours of the day beyond 3 o'clock. In case there is no disruption or untoward incident, the respondents may consider longer period of continuance of internet/mobile data services so that normalcy is returned in all walks of life.

6. We make it clear that maintenance of law and order shall remain the predominant factor. This provision is being made considering the improvement in the situation as observed in the last 3-4 days.

7. We hereby direct the respondents to place on record the entire material that weighed with the respondents in continuing suspension of internet/mobile data service“

5. Mr. D. Saikia, learned senior counsel representing the respondent no.5 have taken us through the affidavit dated 19.12.2019 to say that the Notifications enclosed thereto itself provides justification for suspension of Mobile Internet Service and continuation thereof, save and except, Broadband Internet Service. Reference is made to paragraph 15 thereof to say that a Review Meeting of the State authorities had taken place during the evening hours of 18.12.2019 and considering the inputs received from various intelligence agencies, a decision was taken to continue with the suspension of the Mobile Internet Service and bulk SMS for another 24 hours w.e.f. 9 a.m. of 19.12.2019 in the interest of public safety. In this regard Mr. Saikia have also produced a message received from the Director, IB, New Delhi for perusal of the Court only. The said message is in the nature of an advisory to alert the officers and to marshal their resources and ensure maintenance of law and order in their areas as intensification of protests is anticipated and the scale of protest programmes may increase in the days to come. This is what the affidavit dated 19.12.2019 and the message, aforesaid, primarily discloses. Mr. S.C. Keyal, learned Assistant Solicitor General of India submits that instructions are awaited and he would require time to file affidavit-in-opposition.

6. On behalf of the respective petitioners, submissions and arguments are made by Mr. K.K. Mahanta, learned senior counsel; Mr. A.C. Borbora, learned senior counsel and Ms. J. Kothari, Advocate. Legal points are raised as regards power and jurisdiction of the State authority in issuing the promulgation order, inasmuch as, section 5(2) of the *Indian Telegraph Act, 1885* do not provide for power to prohibit/suspend internet services. The usage of the term "law and order" is also alien to section 5(2). The decision of the Supreme Court of India in the case of *Shreya Singhal vs Union of India*, reported in (2015) 5 SCC 1 is also referred for the proposition that the expressions "public order" and "law and order" connote different meanings. Argument is also placed that there is no justification to continue with the suspension of mobile internet services when Broadband services have already been restored and there are no inputs of misuse of such service. Further, the curfew which was clamped during the height of disturbance has also been lifted, meaning thereby that the then adverse law and order situation have significantly waned. It is also argued that the Notifications are similarly worded and does not reflect due application of mind while issuing the same. Also, no review has been done for assessing the present situation to gauge whether there is any necessity to continue with the suspension of mobile internet services. In our view the arguments with regard to power and jurisdiction of the State authorities in issuing the Notifications under section 5(2) of the *Indian Telegraph Act, 1885* as well as the other legal points raised will require deeper consideration when the PILs are heard exclusively on its merits. For the moment, we would confine ourselves as to whether there is any justification to allow continuance of the suspension of mobile internet services.

7. Very importantly, no material is placed by the State to demonstrate and satisfy this Court that there exists, as on date, disruptions on the life of the citizens of the State with incidents of violence or deteriorating law and order situation which would not permit relaxation of mobile internet services.

8. Indeed, mobile internet services have its uses and misuses. Incidents of violence and vandalism that prevailed on the date of promulgation of the initial Notification, with apprehensions of misuse of the services that would stoke violent activities affecting public safety, indeed, justify the initial action of promulgation. But now no material is placed to show that there is no palpable shift of the situation and things have remained constant. In fact, over the last few days, and as brought to the notice of this Court by the counsels representing the petitioners, there is an obvious shift of situation to a better state of affairs. It is shown that although there are reports of sit-in demonstrations taking place even today, however, such protests are not reported to have yielded

disruptive and violent results. To say the least, with the advancement of science and technology, mobile internet services now plays a major role in the daily walks of life, so much so, shut-down of the mobile internet service virtually amounts to bringing life to a grinding halt. This is not to say that shut-down or suspension of service has to be viewed as an anathema. In given and specific situations, law permits suspension. But, would it be allowed to continue when the present situation do not justify its continuance; when the situation that prevailed on the date of issuance of the initial Notification is not shown to subsist as on date; when there has been an apparent shift to a state of normalcy on the lives of the citizens; when the period of acute public emergency which had necessitated suspension of mobile internet services have largely diminished, we would answer by observing that it is about time to make an interim direction for restoration of mobile internet services of all Mobile Service Providers, pending consideration and disposal of the present PILs on individuals merits.

9. In the above view of the matter, let Notice be issued returnable by 4 (four) weeks. Petitioners to serve extra copies of the petitions upon the counsels representing the State respondents.

10. As an interim measure, we make a direction to the State respondents, particularly the respondent no.5 i.e. the Additional Chief Secretary to the Government of Assam, Home and Political Department, to restore the mobile internet services of all Mobile Service Providers in the State of Assam, commencing 1700 Hrs (5 P.M.) today i.e. 19.12.2019. Needless to say, it would be open to the State authority to take steps to curb and stop dissemination of explosive messages, videos on various social media platforms which may have a tendency to incite violence and disruptions affecting public safety on cogent and justifiable grounds and materials.

JUDGE

JUDGE

Comparing Assistant