
(1984) 08 GAU CK 0004
In the Gauhati High Court
Case No : Civil Rule No. 362 of 1980

Bidyadhar Neog

APPELLANT

Vs

State of Assam and Another

RESPONDENT

Date of Decision : 10-08-1984

Acts Referred:

Assam Maintenance of Public Order Act, 1947 — Section 5

Citation : AIR 1985 Guw 82

Hon'ble Judges : T. Nandakumar Singh, J;K.M. Lahiri, J

Bench : Division Bench

Advocate : P.G. Barua and D. Goswami, for the Appellant; S.N. Bhuyan, General, Assam, P. Roy and B.B. Narzary, for the Respondent

Judgement

Lahiri, J.—In Civil Rule No. 107/84 Pratap Chandra Das & Ors. v. District Magistrate, Kamrup, Gauhati & Anr. the petitioner questioned the validity of the order passed by the District Magistrate imposing collective fine in exercise of power u/s 5 of the Assam Maintenance of Public Order Act, 1947, as amended. The facts and circumstances of that case as well as the question of law are same and in the course of hearing we have heard Mr. S. N. Bhuyan, learned Advocate General, Assam, on behalf of the respondents and Mr. P. G. Barua and anr. on behalf of the petitioner: Learned counsel for the parties submitted that the order that we rendered in Pratap Chandra (supra) should be rendered in this case on the basis of the principle enunciated therein. Accordingly, for the reasons set forth in Pratap Chandra (supra) we make the following order in this case :

It would meet ends of justice if the petitioner is granted post decisional hearing which undoubtedly include his right to submit representation against the order imposing collective fine and respective or individual liabilities of the inhabitants of the village. We maintain the impugned order but direct the District Magistrate not to give effect to the orders until the petitioner files his objection or until due enquiries are completed. We further direct that the petitioner and other inhabitants of the village who have been affected by the impugned order may file

their objections regarding imposition of collective fine, the quantum of fine imposed on them and/or apportionment of such fine within 5 weeks from to-day. We make it clear that all inhabitants of the village affected by the impugned order may also file representation within the aforesaid period and while making representation the petitioner and/or the inhabitants of the village may also question the jurisdiction of the District Magistrate to make orders u/s 5(1) of "the Act".

2. After such objections and/or representations are filed within the aforesaid period, the District Magistrate concerned shall hold necessary enquiry and may sustain, recall or review the impugned order and/or may hold that it had not jurisdiction to pass the impugned order and/or may make any necessary order about apportionment of fines in accordance with law. However, the enquiries should be completed in the manner herein indicated and the result of the decision must be announced by a public notice.

3. We are unsure as to whether the order rendered u/s 5(1) of "the Act" was published as required under law. If it has not been so published learned Magistrate shall consider the effect thereof. Learned District Magistrate shall be at liberty to consider whether imposition of collective fine was necessary on the basis of the representations to be made by the petitioner and/or the inhabitants of the village. It will be open to learned District Magistrate to decide the question raised by the petitioner and/or other aggrieved persons and to reach his own independent conclusion without being influenced by any of the observations made by us.

4. We also direct that the operation of the impugned order passed by the learned District Magistrate in the form of setting aside the impugned order and/or making a new order and/or sustaining the earlier order should not be given effect to by the District Magistrate until expiry of 15 days from the date of the publication of the said order.

5. The petitioner and/or the inhabitants of the village should be informed about the date of the enquiry to enable them to represent their cases.

6. We grant liberty to the petitioner and/or the inhabitants of the village to take any point which they have taken in this petition in future, provided they are adversely affected by any future order to be passed in the proceedings.

7. However, if no representation is received by the learned District Magistrate, Sibsagar, within the period of 5 weeks from to-day, learned District Magistrate may confirm the impugned order and announce the same as required under the law.

8. With these observations, we dispose of the petition. There will be no order as to costs.