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**(1948) 11 GAU CK 0005**  
**In the Gauhati High Court**

Nirendra Mohan Lahiri and Others

APPELLANT

Vs

Government of Assam

RESPONDENT

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**Date of Decision :** 19-11-1948

**Acts Referred:**

Assam Maintenance of Public Order Act, 1947 — Section 2(1), 2(1)(a), 2(2)

**Citation :** AIR 1949 Guw 37 : (1949) CriLJ 754

**Hon'ble Judges :** Ronald Francis Lodge, C.J; T.V. Thadani, J

**Bench :** Division Bench

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**Judgement**

Lodge, C.J.—This Rule was issued under the provisions of 8. 491, Criminal P. O. at the instance of a number of persons detained in the District Jail at Jorhat. The material facts are these:

2. The petitioners were arrested on 22nd May 1948 and placed in custody. On 6th June 1948, the Deputy Commissioner, under the provisions of 8. 2 (2). Maintenance of Public Order Act, 1947, directed that they be detained for a period of two months. On July 20th, the Government of Assam passed an order directing that the period of detention be extended. Towards the end of July, this Court delivered judgment in the case of Chyne v. The Government of Assam, and held that the Government had no power to extend the period of detention in such a manner. There, after on 9th August 1948 the present petitioners moved this Court contending that their further detention under the orders of Government, dated 20th July 1948, was illegal. A Rule was accordingly issued on the Chief Secretary to the Government of Assam and on the Superintendent of Jorhat Jail to show cause why the petitioners should not be set at liberty.

3. On 14th August 1948, a letter was addressed to the Deputy Commissioner of Sibsagar by the Chief Secretary to the Government of Assam, directing that in view of the High Court Ruling, the petitioners be released from custody. But with the same letter, fresh orders by the Governor of Assam u/s 2(1) (a), Assam Maintenance of Public Order Act, 1917, were forwarded to the Deputy Commissioner, and the latter was directed to have the petitioners re. arrested

after their release and detained under the new orders.

4. Accordingly, on 16th August 1948, the petitioners were told that they were released under orders of Government, and were immediately rearrested under the new orders within the very jail compound. It is contended that their detention under the new orders is illegal and that they are entitled to be set at liberty.

5. Mr. Lahiri appeared for the petitioners and contended (1) that the Assam Maintenance of Public Order Act, 1947, was itself ultra vires of the Provincial Legislature inasmuch as the prior consent of the Governor-General had not been obtained; (2) that u/s 9 of the Act, the Provincial Government had delegated its powers to the various Deputy Commissioners of districts and had thereby divested itself of power to take action under the provisions of the Act; and (3) that on a consideration of all the facts and circumstances, the Court ought to hold that the petitioners had been improperly detained.

6. Mr. Barman for the Government of Assam contended that the prior consent of the Governor-General was not necessary and that, therefore, the Act itself was not ultra vires. He denied that by conferring powers on the various Deputy Commissioners, the Provincial Government had thereby divested itself of its powers; and he strongly contended that it was not the function of this Court to go into the grounds for the detention of the petitioners or to consider whether those grounds would be regarded as sufficient by this Court to justify the orders of detention.

7. With regard to the first of Mr. Lahiri's arguments, this matter has been considered by a Pull Bench of the Calcutta High Court in the case of Jhan Prosanna Das Gupta on behalf of Satya Prosanna Das Gupta v. The Province of West Bengal A. I. R 1949 Cal. 1 F. B. The Calcutta High Court held, in exactly similar circumstances, that the prior consent of the Governor-General was not necessary; and we respectfully agree with that decision.

8. We are unable to see any force in Mr. Lahiri's second argument, u/s 2 (1) of the Act, the Provincial Government may make certain orders. u/s 2 (2) of the Act, the District Magistrate may exercise the powers conferred on the Provincial Government u/s 2(1). Section 9 of the Act empowers the Provincial Government to authorise any officer (with certain exceptions) to exercise the powers conferred by Section 2 (1) on the Provincial Government. The Government of Assam, purporting to act u/s 9 of the Act, has by order directed that the powers and duties conferred on the Provincial Government by Section 2 (1) shall be exercised and discharged by the District Magistrate in each district of the Province. Whether by passing such an order, other powers have been conferred on the District Magistrate than possessed already under the provisions of Section 2 (s) of the Act, is a matter with which we are not concerned in the present case. But the mere fact that an officer of Government has been authorised to exercise the powers in each district of the Province, does not, in

our opinion, mean that the Provincial Government has thereby divested itself of the powers. The Act itself shows that the Legislature contemplated that the powers should be exercised in respect of one and the same area, either by the Provincial Government or by the District Magistrate, and that, therefore, in each area of the province, the Provincial Government and the District Magistrate both had power to take action. It is clear, therefore, that the fact that there exists in any area an authority empowered to take action under the Act is not inconsistent with the existence of another authority also entitled independently to take action in the same area. Therefore the fact that officers have been empowered throughout the Province u/s 9 of the Act, does not mean that the Provincial Government has divested itself of the power to . take action.

9. With regard to the third argument, we are in agreement with Mr. Barman's contention, The Act provides that the Provincial Government may make orders u/s 2 (I) if the Provincial Government is satisfied of the necessity not, the necessity of doing so is proved. The only test is whether the Provincial Government is satisfied. There is no question of the Courts or any other authority being so satisfied. In our opinion, if the Provincial Government is so satisfied, it is not the function of this Court to examine the grounds of detention and decide whether the grounds" are such as in the opinion of the Court would justify the orders passed. The Calcutta High Court also arrived at the same conclusion on this point also in the case of Jhan Prosanna Das Gupta : AIR 1949 Cal. 1 F. B referred to above.

10. In the result, therefore, we are of opinion that there is no reason to suppose that the petitioners have been illegally detained; and we, therefore, order that these Rules be discharged.

11. We grant a certificate u/s 205 (I), Government of India Act.