

(1986) 11 GAU CK 0002

Gauhati High Court

Case No: None

Md. Masud Ali Mazumdar

APPELLANT

Vs

State of Assam and Another

RESPONDENT

Date of Decision: Nov. 26, 1986**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 226

Citation: (1987) CriLJ 1722**Hon'ble Judges:** K. Lahiri, C.J; S.N. Phukan, J**Bench:** Division Bench

Judgement

K. Lahiri, C.J.

This is an application under Article 226 of the Constitution of India.

2. Over six years ago, way back on the 9th of April, 1980, the District Magistrate, Cachar in exercise of his power u/s 5 of the Assam Maintenance of Public Order Act, 1947 (for short, "the Act") ordered that the villagers of Dinonathpur Part 1 and Part II should pay a "Collective fine" of Rs. 15,000/- within 25 days of the date of publication of the order. However, the amount of fine which each family of the village was liable to pay would be communicated individually to the families and a list would be prominently displayed in the village, the concerned Gaon Panchayat office and the office of the Sub-Deputy Collector, Katlisherra. Further, it was directed that the fine should be paid within 25 days from the date of receipt of the notice and in any case not later than 10th May, 1980 and that the fine would be recovered as arrears of land revenue from the person or persons concerned who fail to comply with the above order. The petitioner, representing himself and the villagers of Dinonathpur Part I and Part II, has questioned the validity of the order under Article 226 of the Constitution of India.

3. It has been contended by Mr. S.A. Laskar that three persons had died but there was no communal tension at the relevant time and none had failed to inform the

authorities about any communal violence in or around the village and/or failed to render any assistance to the authority to discover and/or apprehend the offenders and as such, the impugned order rendered u/s 5 of "the Act" is liable to be set aside. The next contention is that the petitioners were entitled to a post-decisional hearing and learned Counsel relies on the following decisions :

(1) Zurrenchung Lotha v. State of Nagaland (1981) 1 Gau LR 385;

(2) Civil Rule No. 107 of 1984 : Pratap Chandra Das v. District Magistrate, Kamrup, Gauhati, decided on 11-2-1984;

(3) Civil Rule No. 165 of 1984 : Residents of Village Kalexari v. State of Assam decided on 9-8-84;

(4) Civil Rule No. 83 of 1980: Brinde Nath Sarma v. State of Assam, decided on 10-8-1984 reported in [Brinde Nath Sarma Vs. State of Assam and Another](#),

4. The impugned order opens up with the preamble contained in Section 5(1) of "the Act", the petitioner contends that there was no arson or communal violence resulting in loss of human lives which ever prejudicially affected the maintenance of public order. The petitioner further contends that there was no materials before the District Magistrate to show that the villagers had failed to render all the assistance within their power to discover and apprehend the offender or offenders or ever suppressed any material evidence of the commission of any offence. This contention has some support from the first information report lodged in connection with the death of three persons belonging to one community, vide Annexure-I to the writ petition. Annexure-1 further shows that the villagers belonging to both the communities informed the police about the death of three persons. However, the learned District Magistrate has stated that he was satisfied from the materials before him that the villagers had caused arson and communal violence resulting in loss of lives and that the villagers were engaged in commission of offences prejudicially affecting the maintenance of public order and that the villagers had failed to inform the authorities about their knowledge that such activities were going on and/or had abetted the commission of offences prejudicially affecting maintenance of public order and so forth. We do not propose to enter into the question and decide which version of the parties is correct and leave the matter here.

5. In the cases alluded to in para 3 it has been held that after a notice is issued, a post-decisional hearing must be given to the villagers affected by the order, which includes the right to submit representations by the affected villagers against the impugned order imposing fine and/or imposing liabilities on them. In the instant case, the collective fine was imposed and in the said order the quantum of alleged collective fine was determined and the villagers were compelled to deposit the fine within 25 days from the date of receipt of the order, threatening then that the fine would be recovered as arrears of land revenue from the villagers in the event they

failed to comply with the terms of the order. We are of the firm opinion that in the instant case the villagers of Dinonathpur Part I and Part II were entitled to notice to show cause as to why the order should not be maintained.

6. Mr. S. A. Laskar, learned Counsel for the petitioner submits that in view of lapse of time, the necessity of imposition of collective fine has lost its force. learned Counsel submits that now there exists communal harmony and if the order is not withdrawn and fine is collected, the warm relationship amongst the different communities may be jeopardised.

7. We, therefore, direct the District Magistrate to reconsider the matter as to whether the impugned order dt. 9th April, 1980 should be withdrawn or given effect to. If he had the power to issue the order, under the provisions of the Assam General Clauses Act he has positive power to withdraw the order on being satisfied that the impugned order would not serve any purpose at the present juncture. However, the order should be rendered by the District Magistrate if he deems just and proper.

8. Further, we direct the petitioner and/or the villagers who have been affected by the impugned order to file their objections before the District Magistrate showing cause why the order should be withdrawn, cancelled or modified. Accordingly, maintaining the impugned order, we direct the learned District Magistrate not to give effect to the order until the villagers of Dinonathpur Part I and Part II file their objections or submit show cause and until an enquiry is conducted. We, however, direct the petitioner and Ors. who have been affected by the impugned order to file their objections against the imposition of collective fine, the quantum of fine imposed and/or the apportionment of such fine amongst the families. There is no rationale in imposing equal fine on unequal families ♦ one family may be rich, another may be poor; one family may be absolutely innocent, others may have some connection with the allegations. Accordingly, we find that the apportionment must be made by the District Magistrate after due enquiry and must be according to the best judgment of the District Magistrate, i.e., the District Magistrate must apply his mind to the case of each family and decide the question of apportionment of fine.

9. We also make it clear that the petitioner and/or the villagers aforesaid may file objections questioning the jurisdiction of the District Magistrate to make the order in question. We allow the petitioner and/or the villagers to make the representation within three months from today and thereafter the District Magistrate shall hold an enquiry and may sustain the order or recall the same, or it may hold that it had no jurisdiction to pass the impugned order, and/or it may hold that no useful purpose would be served if further proceeding is taken up on the basis of the impugned order. Learned District Magistrate may cancel or withdraw the order bearing in mind climate and condition, peace and quiet of the locality. He is the best judge in respect thereto. We consider that if the learned District Magistrate considers that

the order should not be given effect to, he may suo motu cancel or withdraw the order. However, if he considers that further enquiry is necessary, he shall inform the villagers fixing a certain time and thereafter the villagers may file their representation which shall be duly considered by the District Magistrate.

10. While rendering the judgment, we have the advantage of hearing Mrs. K. Deka, learned Govt. Advocate, Assam, appearing on behalf of the respondents.

11. In the result, the petition is accepted to the extent indicated above. We, however, make no order as to costs. Send down the records expeditiously.