**BANASHREE GOGOI & ORS V. UNION OF INDIA & ORS**

 India, Asia

**EXPANDS EXPRESSION**

**MODE OF EXPRESSION**

Electronic/Internet-based Communication

**DATE OF DECISION**

December 19, 2019

**OUTCOME**

Interim Order granted; Respondents directed to restore mobile internet services of all Mobile Service Providers in the State of Assam.

**CASE NUMBER**

PL 78/2019

**JUDICIAL BODY**

First Instance Court

**TYPE OF LAW**

Civil Law/ Administrative Law

**THEMES**

Access to Public Information/ Public Order/ National Security

**TAGS**

Mobile Internet Services, Public Order, Public Safety

**CASE ANALYSIS**

**Case Summary and Outcome**

The Gauhati High Court ordered the immediate restoration of mobile internet services in the State of Assam. The State of Assam has suspended mobile internet services on the ground of public safety in light of recent civil unrest prevailing in different parts of state of Assam and the apprehension that break down of law and order might be resulted. The suspension was effected pursuant to provisions of section 5(2) of the Indian Telegraph Act, 1885 and the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017. The court however reasoned that the continued suspension of mobile internet services in the state of Assam could no longer be justified as incidents of violence and vandalism that necessitated the suspension of mobile internet services in the first place no longer exist and there was no evidence before the court to the contrary.

**Facts**

Four Public Interest Litigations (PILs) were brought by the petitioners (Messrs. Banashree Gogoi, Deva Kanya Doley, Ajit kr. Bhuyan and Randeep Sharma) challenging the promulgation of Notifications by the Government of Assam whereby in view of the then prevailing protests in different parts of the state of Assam and amid fear that the protests would intensify thereby resulting into break down of law and order occasioning possible threats to public safety and security, the government then invoked 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 to prohibit Mobile Internet/Data Service of all Mobile Service Providers firstly in 10 (ten) districts of Assam and later in the entire state. The suspension which was triggered by citizens’ protests over the amended Citizenship Act had commenced with the Promulgation of Notification issued on 11/12/2019. In the course of time and by the subsequent Notifications, Broadband Internet Services were relaxed, the suspension on Mobile Internet Service was nonetheless not recalled but allowed to continue, hence the complaints by the petitioners to the court.

Mr. KK Mahanta and ASSTT.S.G.I represented the Petitioner and Respondents respectively in the first set of petition while Swati. B. Baruah (TG) and Ga Assam represented the Petitioner and Respondents respectively in the second petition. In the third set of petition, the Petitioner and the Respondents were represented respectively by Mr. AC Borbora and Ga Assam while Mr. P Phukan and Ga Assam respectively appeared for the petitioner and Respondent in the fourth set of petition.

**Decision Overview**

Manojit Bhuyan, J. delivered the ruling of the court in this case. The court comprised the duo of Honourable Justices Manojit Bhuyan and Soumitra Saikia. The petitioners submitted for the determination of the court legal issues regarding the powers and jurisdiction of the state authority to issue promulgation order suspending internet services in the state especially as section 5(2) of the Indian Telegraph Act, 1885 does not provide for power to prohibit/suspend internet services. The court however expressed the view that the arguments of the parties with regard to the power and jurisdiction of the state authorities to issue Notifications under section 5(2) of the Indian Telegraph Act, 1885 as well as the other legal issues raised will require deeper consideration when the four (4) PILs are later heard exclusively on the merits. The court therefore confined itself to the question bothering on the continued suspension of mobile internet services in the state.

Arguing the case on behalf of the petitioners, Mr. K.K. Mahanta; Mr. A.C Borbora, learned senior counsel and Ms. J. Kothari, Advocate, contended that the term “law and order” was alien to section 5(2) of the Act; citing also in support, the Supreme Court of India’s case of **SHREYA SINGHAL V. UNION OF INDIA, reported in (2015) 5 SCC 1** for the proposition that the expressions “public order” and “law and order” connotes different meanings. The petitioners also argued that there was no justification to continue with the suspension of mobile internet services when Broadband services which was clamped during the height of disturbance has been lifted, meaning thereby that the then adverse law and order situation have significantly waned. The petitioners submitted further that the Notifications promulgated by the state are similarly worded and do not reflect due application of mind while issuing the same and concluded that no review has been done by the state for assessing the present situation to gauge whether there was any necessity to continue with the suspension of mobile internet services.

Conversely, Mr. D. Saikia, learned senior counsel representing the 5th Respondent referred the court to the affidavit dated 19/12/2019 to argue that the Notifications that were enclosed to the affidavit provided justification for suspension of Mobile Internet Service and continuation thereof, save and except, Broadband Internet Service. Counsel specifically made reference to paragraph 15 of the affidavit to submit that a Review Meeting of the State authorities took place during the evening hours of 18/12/2019 and that the inputs received from various intelligence agencies led to a unanimous decision taken to continue with the suspension of the Mobile Internet Service and bulk SMS for another 24 hours in the interest of public safety. Counsel proceeded to produce a message received from the Director, IB, New Delhi for the perusal of the Court only, which said message, was 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 was anticipated and the scale of protest programmes was speculated to increase in the days to come. Mr. S.C Keyal, learned Assistant Solicitor General of India on the other hand, submitted that he was awaiting instructions and therefore require time to equally file an affidavit-in-opposition to the petitioners’ application.

In deciding the matter, the court firstly referred to its direction contained in its Order dated 17/12/2019 in respect to case no. PIL 78/2019 where the court observed that:

*“5. Having considered all the aspects of the case and in particular the dependence of the citizens on the 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”*

The court in its final analysis noted the merits and demerits of internet services and held that no material was placed by the Respondents to demonstrate or satisfy the court that there existed as at the relevant date, disruptions of 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. The court particularly observed at pages 7 and 8 of the ruling thus:

*“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…”*

The court accordingly made an interim order directing the Respondents, particularly the 5th respondent 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 by 1700 hours (5P.M) on 19/12/2019. The court added that it would be open to the Respondents 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.

**DECISION DIRECTION**

**Expands Expression**

The decision expands expression particularly the freedom to receive and impart information without interference as it found that there was no justification for the Respondents’ continued suspension of mobile/internet services in the state of Assam. This decision is of notable interest as it emphasizes the established position of law that it is not just sufficient to restrict expression based on mere allegation or speculation of threat to public safety, public security or national security but that the party seeking to restrict expression including via the internet, must place sufficient materials before the court to establish such claim of threat to public security or safety in order to restrict expression or to continue to restrict expression like in this case.

**GLOBAL PERSPECTIVE**

**National Standards, Laws or Jurisprudence**

Indian Telegraph Act, 1885, section 5(2)

Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017

India, Shreya Singhal v. Union of India, reported in (2015) 5 SCC 1

**CASE SIGNIFICANCE**

The decision establishes binding or persuasive precedent within its jurisdiction.

**OFFICIAL CASE DOCUMENTS**

Order of the Court

<https://economictimes.indiatimes.com/news/politics-and-nation/mobile-internet-services-in-assam-to-be-restored-on-friday-himanta-biswa-sarma/articleshow/72890235.cms>

<https://www.business-standard.com/article/current-affairs/guwahati-hc-directs-assam-govt-to-restore-mobile-internet-services-by-5-pm-119121900961_1.html>

https://www.indiatoday.in/india/story/assam-internet-services-restored-citizenship-amendment-act-protest-chief-minister-sarbananda-sonowal-1629940-2019-12-20