

GAHC010169412022



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

Case No. : WP(C)/5527/2022

RAJU PROSAD SARMA
S/O- LATE SHRI NARENDRA NATH SARMA,
R/O- H.NO- 45, UDAYACHAL PATH, CHRISTIAN BASTI, DISPUR, KAMRUP
(M), ASSAM, PIN-781005

VERSUS

STATE OF ASSAM
REP. BY PRINCIPAL SECRETARY ,GOVERNMENT OF ASSAM, 2ND FLOOR,
CM BLOCK, ASSAM SECRETARIAT, DISPUR, GUWAHATI-06, ASSAM

Advocate for the Petitioner : MS. B CHOWDHURY

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

26.08.2022

Heard Ms. G. Goswami, learned counsel assisted by Ms. B. Choudhury,
learned counsel appearing for the writ petitioner. Also heard Mr. D. Saikia,
learned Advocate General, Assam assisted by Mr. D. Nath, learned Senior

Government Advocate, Assam appearing for the sole respondent.

The notification dated 18.08.2022 (Annexure-1) issued by the Principal Secretary to the Government of Assam, Home and Political Department, temporarily suspending mobile internet connectivity during the examination hours in connection with the recruitment drive undertaken by the State, is under challenge in the present writ petition.

By the impugned notification dated 18.08.2022 issued invoking the power conferred under the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017 read with Section 5(2) of the Indian Telegraph Act, 1885 mobile internet (mobile data) in respect of the 24 districts which have centers of written examination for filling up 30000 posts (approx.) for Grade-III and Grade-IV services in different departments in the State shall remain suspended during the exam hours on two specified dates i.e. on 21.08.2022 between 10:00 a.m. to 12:00 noon and between 2:00 p.m. to 4:00 p.m.; on 28.08.2022 between 10:00 a.m. to 12:00 noon and thereafter, between 2:00 p.m. to 4:00 p.m. meaning thereby that on 21.08.2022 and 28.08.2022 mobile internet shall remain suspended for a total period of four hours in those 24 districts so as to facilitate free, fair and transparent conduct of the written examination. A bare reading of the impugned notification further goes to show that in order to curb the malpractice of cheating in the examination hall by use of mobile phone and internet technology, the aforesaid measure has been adopted.

Assailing the impugned notification, Ms. Goswami has strenuously argued that the notification puts a fetter in the exercise of fundamental rights

guaranteed to her client under Article 19(1) of the Constitution of India inasmuch as under the provisions of Section 5(2) of the Indian Telegraph Act, 1885, internet services cannot be suspended so as to prevent cheating in examination hall. Ms. Goswami has further argued that the only recourse in such matter of suspension of internet was in accordance with the procedure laid down in Article 19(2) of the Constitution which has evidently not been followed in this case.

By placing heavy reliance on the decision of the Supreme Court rendered in the case of **Anuradha Bhasin Vs. Union of India** reported in **(2020)3 SCC 637** as well as in the case of **People's Union for Civil Liberties (PUCL) vs. Union of India and another** reported in **(1997)1 SCC 301** Ms. Goswami has argued that since temporary suspension of internet services directly infringes upon the fundamental right of her client, this is a fit case where this Court should not only interfere with the impugned notification but an interim order suspending the operation of the notification with immediate effect be also issued as otherwise, it would lead to miscarriage of justice.

Responding to the submissions made by the petitioner's counsel, Mr. Saikia, learned Advocate General, Assam, has placed the relevant documents for perusal of this Court so as to demonstrate that having regard to the enormity of the exercise and in order to instill public faith and confidence and also to ensure a free, fair and malpractice-free recruitment process, the State has come up with elaborate arrangements on the basis of Standard Operative Procedure and temporary suspension of the mobile data services during the examination hours was adopted as the last option. According to Mr. Saikia,

such a measure had to be adopted by the State after putting in place all other measures, which will go hand in hand to ensure a free and fair selection process. Mr. Saikia submits that having faced the onslaught of question paper leakages by use of mobile phone and mobile internet in the few recruitment processes held in the State of Assam over the past several years leading to cancellation of the process, the State Government took a very serious view in the matter and to preserve the sanctity of the process came up with such stringent measure since it was not technically feasible to selectively suspend mobile data services only in those areas where examination centers were located. It is also the submission of Mr. Saikia that the internet services through broadband and cable internet all over the State would remain uninterrupted even during the examination time and it is only the mobile data services which will be suspended temporarily, that too, for a specified period, on a Sunday afternoon which is a holiday for the other institutions.

In support of his above argument the learned Advocate General has also referred to the decision of **Anuradha Bhasin** (supra) to submit that the recourse adopted by the State is both permissible and justified in the facts and circumstances of the case.

Questioning the bona fide of the writ petitioner Mr. Saikia has further argued that there is nothing on record to indicate as to whether the petitioner has a mobile phone and if so is he using mobile data services and therefore, the writ petition is liable to be dismissed on such count alone.

In reply, Ms. Goswami submits that the petitioner is personally aggrieved since his mobile services is not working due to suspension of the data card.

I have considered the arguments advanced by the learned counsel for both the sides and have also gone through the materials available on record.

The question as to whether, mobile data services can be temporarily suspended so as to avoid cheating in examination centers is a serious issue which may call for deeper examination by this Court. But the same would not be possible unless the State files affidavit bringing its stand on record along with the supporting documents.

As such, issue notice of motion returnable in four weeks.

Since Mr. D. Nath, learned Sr. Govt. Advocate, Assam has entered appearance and accepted notice on behalf of the respondent, no formal notice is required to be sent in this case. However, extra copies of the writ petition, requisite in numbers, be furnished to the learned Government Advocate so as to enable him to obtain instruction and file affidavit.

Heard on the prayer for interim relief.

Since the next examination is scheduled on 28.08.2022, which is just two days away and considering the submission made by the learned Advocate General that the suspension of data services will not be extended to the examination scheduled to be held on 11.09.2022 and also keeping in mind that the disruption that may be caused in the holding of the examination fixed on 28.08.2022, if an interim order is passed at this stage suspending the impugned notification, I am not inclined to pass any interim order. This Court is also of the view that the petitioner has failed to make out a case on facts in support of his prayer for interim relief.

Therefore, the prayer for the interim order stands rejected.

JUDGE

Comparing Assistant