

July 18, 2022
Sl. No. 25
Court No.1
PA(RB)

WPA (P) 104 of 2022

Ashlesh Biradar
vs.
The State of West Bengal

Mr. Ranjan Bachawat, Senior Advocate
Mr. Manoj Tiwari,
Mr. Shwetank Ginodia,
Ms. Harshita Ginodia,
Mr. Satyaki Mukherjee, Advocates

... for the petitioner

Mr. S. N. Mookherjee, Id. AG
Mr. Samrat Sen, Id. AAAG
Mr. Anirban Ray, Id. GP
Mr. T.M. Siddiqui,
Mr. Nilotpall Chatterjee, Advocates

... for the State

This public interest petition was filed challenging the order dated 3rd of March, 2022 issued by the Additional Chief Secretary, Home & Hill Affairs Department, Government of West Bengal under Section 144 of Cr.P.C. temporarily suspending the internet services within the specified complex/police stations of district Malda, Murshidabad, Uttar Dinajpur, Cooch Behar, Jalpaiguri, Birbhum and Darjeeling. This Court, after hearing learned counsels for both the parties and after taking note of the requirement of Section 144 of Cr.P.C. and the judgments of the Hon'ble Supreme Court in the matter of **Anuradha Bhasin vs. Union of India and Others** reported in (2020) 3 SCC 637 and **People's Union For Civil Liberties (PUCL) vs. Union of India and Another** reported in (1997) 1 SCC 301 and requirement of the provisions of the Act, had prima

facie reached to the conclusion that the impugned order was passed without authority of law and without taking note of the requirement of Section 5(2) of the Indian Telegraph Act, 1885 and Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017 (for short, 'the Rules of 2017') and also found that test of proportionality was not satisfied. Therefore, by order dated 10th of March, 2022, this Court had stayed the operation of the impugned order dated 3rd of March, 2022 until further orders.

A perusal of the impugned order dated 3rd of March, 2022 reveals that the said order was to remain valid and to be implemented for a specified period from 7th of March, 2022 to 9th of March, 2022, 11th of March, 2022, 12th of March, 2022 and 14th of March, 2022 to 16th of March, 2022, hence, with the passage of time, the impugned order has lost its force.

Learned counsel for the petitioner has referred to Rule 2(2) and Rule 2(6) of the Rules of 2017 which reads as under:

“2(2).Any order issued by the competent authority under sub-rule (1) shall contain reasons for such direction and a copy of such order shall be forwarded to the concerned Review Committee latest by next working day.

* * *

2(6). The Review Committee shall meet within five working days of issue of directions for suspension of services due to public emergency or public safety and record its findings whether the directions issued under sub-rule (1) are in

accordance with the provisions of sub-section (2) of section 5 of the said Act.”

Referring to the above Rules, he has submitted that the State Government in the subsequent order has not complied with these Rules, therefore, a direction be issued to duly comply with the said Rules. He has also submitted that the order suspending telecom services is required to be published and in this regard, he has referred to the paragraph 160.1 of the judgment of the Hon’ble Supreme Court in the case of **Anuradha Bhasin (supra)**.

The Rule of 2017 are required to be complied with and the Hon’ble Supreme Court has already laid down the law which is binding under Article 141 of the Constitution, hence, we express hope that while issuing any such order in future, the State authorities will duly comply with the same.

Since the issue involved in the present case has now become academic, therefore, we accordingly dispose of the petition.

[Prakash Shrivastava, C.J.]

[Rajarshi Bharadwaj, J.]