

IN THE COURT OF PRINCIPAL SESSIONS JUDGE KISHTWAR.

Waseem Akram Butt S/o Mohd Iqbal Butt R/o Berwar Kishtwar.
Petitioner.

Through Mr. Safder Ali Shoket Advocate.

Vs.

District Magistrate Kishtwar.



(Respondent)

In the matter of:-

Criminal Revision petition under section 438 BNSS against the order impugned dated 10.02.2025 passed by District Magistrate Kishtwar.

Mr. Safder Ali Shoket advocate for the petitioner.

***CORAM; Manjeet Singh Manhas,
UID No. JK00104.***

ORDER

1. The brief facts of the revision petition are as under:-

(i). That the petitioner is Organizer of Movement Mission Bijli Free for the entire District Kishtwar and in this regard the people of Kishtwar have been protesting peacefully for the free electricity for the entire District as the District Kishtwar is hub of Power generating District and the movement is gaining momentum as large number of people are joining the same movement and protest/demand of free electricity from the Governments (Central as well as UT) as the electricity is concurrent subject of both governments under the Constitution of India and it is unfortunate and painful to disclose that it is on 10.02.2025, the respondent Deputy Commissioner/District Magistrate in his order impugned in order to

suppress the legitimate and constitutional right to protest peacefully in order to achieve legitimate demand has passed an order under Section 163 of BNSS.

2. Aggrieved by the aforesaid order, the petitioner has filed the present revision petition and has challenged the impugned order on the following grounds:-

i). That the impugned order has been passed in a mechanical and perfunctory manner and thus requires to be aside on this very ground.

ii). That the impugned order has been passed by the respondent in a hurry as order does not reveal that there was any urgency of invoking Section 163 BNSS, hence the same requires to be set aside on this ground.

iii). That the respondent involved Section 163 BNSS without any inquiry, hence how did the respondent make his opinion for invoking Section 163 BNSS is quite surprising, hence the impugned order requires to be set aside on this very ground.

iv). The power under Section 163 BNSS cannot be used to suppress legitimate expression of opinion or grievance or exercise of any democratic rights like in the present case demanding free electricity from the government, hence the impugned order requires to be set aside.

v). That the Power under Section 163 BNSS can be used when there exists present danger but the danger contemplated should be in the nature of emergency but in the case in hand there is no emergency, hence the order requires to be set aside.

vi). That the order issued by the respondent does not contain material facts and power has not been exercised in Bonafide and reasonable manner, hence the impugned order requires to be set aside.

vii). That no emergent situation has arisen till date, passing impugned order tantamount malafide on the part of respondent.

3. I have perused the petition as well as the grounds of challenge raised by the petitioner, the powers of District Magistrate under Section 163 BNSS are reproduced as under:-

1. PROHIBITORY ORDERS.

The District Magistrate can issue orders prohibiting assembly of more than five persons in a specified area;

2. RESTRICTION OF MOVEMENT.

The District Magistrate can restrict the movement of persons in a specified area.

3. BAN ON PUBLIC MEETING.

The District Magistrate can ban public meetings, protest and gatherings in a specified area.

4. SEIZURE OF PROPERTY.

The District Magistrate can seize property, including fire arms, explosives or other hazardous material.

5. CONDITIONS FOR ISSUING ORDERS UNDER SECTION 163 BNSS

1. APPREHENSION OF VIOLENCE.

The District Magistrate must have a reason to believe that disturbance of public peace is likely to occur;

2. IMMINENT DANGER.

The District Magistrate must be satisfied that imminent action is necessary to prevent violence or maintain peace order;

3. WRITTEN ORDER:

The District Magistrate must issue written order specifying the reasons for restrictions.

4. Now from the perusal of impugned order when it is put to test of law, before issuing the order the following points are mandatorily to be followed by the District Magistrate i.e.

(a). The District Magistrate must have reason to believe;

(b). The District Magistrate must be satisfied;

(c) The District Magistrate must specify the reason for restrictions meaning thereby that there should be specific information or material available before the District Magistrate upon which he can draw his satisfaction that the situation is alarming and in the interest of public peace and tranquility, there is no other option but to invoke these provisions immediately. The District Magistrate must specify the reasons and his satisfaction on actual and factual grounds and the power cannot be used sparingly or on flimsy grounds in the absence of substantial material on record. The area is required to be identified in which there is apprehension of breach of peace or in the alternate the District Magistrate ought to have

identified the place where the people can protest peacefully after issuing a notification in this regard, blanket ban on any protest is infringement of basic fundamental rights as the citizens have every right to highlight their grievances in a peaceful manner by way of protest which is integral part of healthy democracy. The District Magistrate order has to confirm the reason in order to prevent a greater mischief, however, a blanket ban in the whole District impeaches upon the basic fundamental freedom of the citizens and smacks imperialistic attitude and could not stand the test of reason. There is no imminent reason of emergent situation which could have asked for such stringent measures as imposition of restrictions under Section 163 BNSS.

5. The following landmark judgments had already been issued in this regard and guidelines have been specified therein. The relevant case laws on this point are as under:-

1. ***Rex V. Naryan (1947) 49 Bom LR 508.***
2. ***State of Maharashtra Vs. Mohd Yakub (1980) 2 SCC 108.***
3. ***Madhu Limaye Vs. Divisional Magistrate 1970.***
4. ***Must Celebrated Ram Leela Maidan case.***

6. In ***Rabin Roy Choudhury Vs. State, (1998CRILJ1699)***, in Para 17 it has been held as under:-

"17. Section 397 (1) empowers the High Court or any Sessions Judge to call for and examine the record of any proceeding before any inferior Criminal Court within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding or order recorded or passed, and as to the regularity of any proceeding before any such inferior court and according to Explanation to Sub-section (1) of section 397, an Executive Magistrate Exercising original or appellate jurisdiction shall be

deemed to be inferior to the Sessions Judge for the purpose of this sub-section. In other words, an Executive Magistrate is an inferior criminal court and a proceeding under Section 144 is amenable to the revisional jurisdiction of both the High Court and Sessions Judge under Section 397."

7. Now it is also the rule of natural justice that should be given chance being heard is tenant of fair trial, so for drawing satisfaction to the given facts and circumstances, let the record be called from the office of the District Magistrate Kishtwar for perusal and in the meantime the impugned order dated 10.02.2025 is kept in abeyance till next date of hearing. Put up on 18.02.2025.

Announced.

11.02.2025.

Sd/-
(M.S. Manhas)
Pr. Sessions Judge,
Kishtwar.
(UID No. JK00104).

RD Sharma/EA.

Copy of the order forwarded to the office of the District Magistrate, Kishtwar for information and Compliance.

[Signature]
Pr. Sessions Judge
Kishtwar

951/PDSJK
11/02/25.