

IN THE COURT OF PRINCIPAL SESSION JUDGE KISHTWAR

Present: SUDHIR K KHAJURIA

CNR NO. :JKKI01-0000322025

File No. :47/Criminal Revision

D.O.I :11.02.2025

D.O.O:28.08.2025

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

...Petitioner

Versus

District Magistrate Kishtwar.

....Respondent

IN THE MATTER : Criminal Revision Petition under Section 483 BNSS against the
Order impugned dated 10.02.2025

Mr. Safder Ali Shoket Advocate for the Petitioner
PP for the state

CORUM: SUDHIR K KHAJURIA
UID NO. JK00096

ORDER

By virtue of this order above titled criminal revision, filed by petitioner, before this Court on 11.02.2025, is being disposed of.

In the revision, petitioner has challenged an order passed by the District Magistrate under Section 163 BNSS on 10.02.2025, on the ground that impugned order has been passed in a mechanical and perfunctory manner. That the order has been passed by the respondent in a hurry as order does not reveal that there was any urgency of invoking Section 163 of BNSS. That the respondent invoked Section 163 BNSS without any inquiry and without clarifying as to how did the respondent make his opinion for invoking Section 163 BNSS. It is further submitted in the revision that 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. It has been submitted by the petitioner that power under Section 163 BNSS can be used when there exist present danger but the danger contemplated should be in the nature of emergency but in the case in hand there was no emergency. The order issued by the respondent does not contain material facts and

(12)

power has not been exercised in bona fide and reasonable manner. That no emergent situation has arisen till date and passing the impugned order tantamount mala fide on the part of the respondent and finally petitioner has prayed for setting aside the impugned order.

In view of the revision petition notice was issued to other side and at the same time record from the concerned quarter was also called. Record has been obtained.

I have heard the counsel for the petitioner at length and also perused the record maintained by the respondent.

Before proceeding further reference of Section 163 of BNSS is relevant here. Section 163 of BNSS reads as under:

section 163. Power to issue order in urgent cases of nuisance or apprehended danger:-

- (1) In cases where, in the opinion of a District Magistrate, a Sub-divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by section 153, direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety or a disturbance of the public tranquility, or a riot, or an affray.
- (2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed ex parte.
- (3) An order under this section may be directed to a particular individual, or to persons residing in a particular place or area or to the public generally when frequenting or visiting a particular place or area.
- (4) No order under this section shall remain in force for more than two months from the making thereof: Provided that if the State Government considers it necessary so to do for preventing danger to human life, health or safety or for preventing a riot or any affray, it may, by notification, direct that an order made by a Magistrate under this section shall remain in force for such further period not

Pr. Sessions Judge
Kishore

13

exceeding six months from the date on which the order made by the Magistrate would have, but for such order, expired, as it may specify in the said notification.

- (5) Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section by himself or any Magistrate subordinate to him or by his predecessor-in-office.
- (6) The State Government may, either on its own motion or on the application of any person aggrieved, rescind or alter any order made by it under the proviso to sub-section (4)
- (7) Where an application under sub-section (5) or sub-section (6) is received, the Magistrate, or the State Government, as the case may be, shall afford to the applicant an early opportunity of appearing before him or it, either in person or by an advocate and showing cause against the order, and if the Magistrate or the State Government, as the case may be, rejects the application wholly or in part, he or it shall record in writing the reasons for so doing.

It is clear that Section 163 of BNSS has been incorporated in Chapter XI of BNSS 2023 and this chapter XI deals with public order and tranquility. This chapter XI has further been divided in 4 parts, Part (A) deals with the procedure pertaining to unlawful assemblies having Section from 148 to 151. Part (B) deals with public nuisance having Section 152 to 162. Part (C) deals with urgent case of nuisance and apprehended danger having Section 163 only and Part (D) deals with disputes as to immoveable property having Section 164 to 167.

It is clear that Chapter XI of BNSS 2023 deals with public order and tranquility wherein executive orders are required to be passed in order to achieve the required goal for the purpose of maintenance of public order and tranquility, Part (C) which is covered under Section 163 deals with the situation wherein urgent cases of nuisance or apprehended danger are dealt with by the executive agencies. It is relevant to mention here that Section 163 of BNSS 2023 corresponds to Section 144 of Cr.P.C which was applicable prior to the coming into force of BNSS 2023. It is clear from Section 163 BNSS that when in the opinion of Magistrate there is sufficient ground for proceeding under the Section and immediate prevention or speedy remedy is desirable, such magistrate may by written order stating the material facts of the case and served in the manner provided by Section 153, direct any person to abstain from certain act or to take certain order with respect to certain property in his possession or under his management, if such magistrate considers that such direction is likely to prevent or tend to prevent,

(14)

obstruction, nuisance or any injury to any person lawfully employed or danger to human life, health or safety or a disturbance of public tranquility or riot or affray.

It is further clear that an order under this section in case of emergency or in case where the circumstance do not admit of serving in due time of a notice upon the person against whom the order is directed, be passed ex-parte.

An order under this Section may be directed to a particular individual or to person residing in a particular place or area or to public generally when frequenting or visiting a particular area or place.

It is also clear from this Section that any order passed under this Section can be resided or altered by the Magistrate either at his own or on the application of any aggrieved person.

The legal position pertaining to powers under Section 163 BNSS (corresponding to Section 144 Cr.P.C) is very clear. In a case titled Anuradha Bhasin Verses Union of India and Ors as well as in Ghulam Nabi Azad Versus Union of India Hon'ble Supreme Court very clearly and categorically held that for issuance of an order under Section 144 Cr.P.C the District Magistrate must be of the opinion that there is a sufficient ground for proceeding under this provision i.e., the order is likely to prevent obstruction annoyance or injury to any person lawfully employed, or danger to human life, health or safety or disturbance of the public tranquility and immediate prevention or speedy remedy is desirable. The Phrase "**opinion**" suggests that it must be arrived at after a careful inquiry by the Magistrate about the need to exercise extraordinary power conferred under this provision. It has further been held by the Hon'ble Supreme Court that section 144 Cr.P.C is one of the mechanism that enables the state to maintain public peace. It forms part of the chapter in criminal procedure code dealing with maintenance of public order and tranquility and is contained in the sub chapter on **urgent cases of nuisance or apprehended danger**". This structure of the provision shows that this power can only be invoked in urgent cases of nuisance or apprehended danger. It has further been held that Section 144 Cr.P.C has been subject matter of several constitution bench rulings and the constitution validity of Section 144 Cr.P.C came up for the first time before the constitution bench of High Court in Babu Lal Parate case. While repelling the contention that it is an infringement of fundamental right of the assembly, Supreme Court upheld the provisions due to various safeguards inbuilt under the section 144 itself.

18

The Court opined that section 144 Cr.P.C does not confer arbitrary power on the Magistrate since it must be proceeded by an **inquiry**. Although Section 144 confers wide powers, it can only be exercised in an emergency and for the purpose of preventing obstruction and annoyance or injury to any person lawfully employed. Section 144 Cr.P.C is not an unlimited power. The Magistrate while issuing the order under this section has to state the material facts upon which it is based. Court further held that the power under this Section cannot be used to suppress legitimate expression of opinion or grievance or exercise of any democratic right. Section 144 Cr.P.C cannot be invoked unless there is sufficient material to show that there is likely to be an incitement to violate or threat to the public safety or danger. An order passed under section 144 Cr.P.C should state the material facts to enable judicial review of the same. The power should be exercised in a bona fide and reasonable manner, and the same should be passed by relying on the material facts, indicative of application of mind. This will enable judicial scrutiny of the order.

Record from the concerned quarter was called. It is pertinent to mention here that the record which was produced by the respondent contains total number of 7 pages, out of those 7 pages one page is an index whereas other page is docket of this Court and apparently remaining 5 pages is the record which actually was maintained/prepared by the respondent while issuing the order dated 10.02.2025 under Section 163 BNSS and if those 5 pages are scrutinized one by one, it is clear that whole of the proceedings were initiated as well as concluded by the respondent in one day i.e on 10.02.2025. Interestingly proceedings in the matter apparently appears to have been initiated on 10.02.2025 on the basis of a letter bearing No. 75/JC/TK Submitted by Tehsildar Kishtwar to District Magistrate (respondent herein) and this letter is further based on the report of field staff which has been submitted wide No. NTK/607 dated 10.02.2025. Tehsildar Kishtwar by Naib Tehsildar Kishtwar, Patwari Halqa Kishtwar and Patwari Halqa Matta and as per report of field staff some miscreants are indulging in instigating people on the pretext of peaceful demonstration and in the last few public gatherings with valid permission, the policy of government, of installation of Smart electricity meters was condemned vehemently and the public was provoked to deter and obstruct the installation of smart meters and due to such provocation the installation of smart meters has been obstructed in various places in Kishtwar, leading to breach of public tranquility in such area and obstructing government officials in discharging their public functions and official duties. And interestingly when Tehsildar Kishtwar informed the District Magistrate, he almost in a stereotype manner by using almost the same language informed the District Magistrate but while giving report to District Magistrate

he clarified that he is giving the report in compliance to verbal directions of the District Magistrate himself. Although in the impugned order dated 10.02.2025 passed by the respondent it has not been mentioned, as to on the basis of which inquiry or report or what are the sufficient grounds for passing the order but it appears that order impugned has been passed by the respondent on the basis of report through a letter dated 10.02.2025 of Tehsildar Kishtwar which report of Tehsildar Kishtwar was further passed upon the basis of report of field staff.

Now if this order is tested on the touchstone of various legal parameters settled by various High Courts as well as Hon'ble Supreme Court then this order is clearly lacking the basic safeguards which otherwise were mandatory for the Magistrate, to observe, before passing the orders, being the executive order, because order itself was to be passed in order to maintain public order and tranquility. Strangely the report on the basis of which order appears **(although it has not been indicated in the order)** to have been passed, in that report there is a mention about earlier demonstration against the installation of smart electricity meters and there is a mention of earlier provocation of public, in order to deter and obstruct the installation of smart meter. There is also a mention that due to such provocation the installation of smart meter was obstructed in various places in Kishtwar. There is also a mention regarding obstruction of government officials in discharging their public function and public peace, but strangely this report which is **only based upon two paras** typed on one page and signed by three different revenue officials, does not appear to be genuine in legal terms. Had there been some complaint by some government officials regarding obstruction in discharge of their public function/official duties, there must have been a report on their (government officials) behalf to revenue officials or to some other concerned agency. There is clear mention in the report regarding obstruction due to provocation, in the installation of smart meters in various places in Kishtwar, but not even a single person/individual was examined by the concerned revenue officials. If it happened in past there would definitely have been some official record pertaining to early occurrence. Again it is very strange to note that Tehsildar Kishtwar while reporting it to District Magistrate on the same day mentioned that he is giving this report on the basis of verbal directions of the District Magistrate, **meaning thereby that District Magistrate, who actually passed the impugned order**, is the real person who initiated the proceeding by giving oral direction (not the information) to his subordinate and his subordinate on the same day instantly by getting a report promptly prepared on the same day gave the information to the respondent, **who was already having the knowledge** and by this way a vicious circle of receiving and getting the information was started, which started and ended up with the

(12)

same person i.e. **respondent herein**. Now this type of inquiry was never conceived or imagined by the law makers while incorporating section 163 in Chapter XI of BNSS 2023 (corresponding to section 144 Cr.P.C).

Although it is clear from the record that there was no inquiry conducted prior to the issuance of impugned order but even if, for the sake of argument, it is presumed that letter dated 10.02.2025 bearing No. 75/JC/TK as well as report bearing No. NTR/607 dated 10.02.2025 of Revenue officials is an inquiry even then the impugned order does not appears to have been passed on the basis of that inquiry, because impugned order was to be passed on the pretext of **(as per reports of Tehsildar Kishtwar)** preventing breach of peace and public tranquility in the area, wherein government officials were being obstructed in discharge of their public functions and official duties but order impugned does not speaks even in a single word regarding obstruction of government official in discharge of their public function/official duties. Opening words of the order are "whereas it has been observed that some people on the pretext of demonstration are trying to attract gatherings; and whereas for these unauthorized assemblies there is a reasonable apprehension of occurrence of any untoward in incident which can escalate into public disturbance and is eminent threat to public peace and public safety.

It is relevant to mention here that order impugned was passed by the respondent in ex-parte. Although as per section 163 BNSS, in case of an emergency an order can be passed in ex-parte, but the order must be notified by proclamation published in such manner as the government may by rules directs under section 153 of BNSS but even an ex-parte order has to be passed after framing an **opinion** as has been mandated under section 163 BNSS, because an **opinion** regarding any fact cannot be framed without going through some inquiry. Hon'ble Supreme Court has very categorically held that the **phrase opinion** in the relevant section suggests that it must be arrived at after a careful inquiry by the Magistrate about the need to exercise the extraordinary power conferred under the provision.

From the perusal of impugned order passed by the respondent, by no stretch of imagination, it can be gathered that it was passed after framing an **opinion** on the basis of **any inquiry**. Although from the record of the respondent it transpires, that it has been tried to establish that impugned order has been passed on the basis of **some inquiry** but in the order itself not even a single word has been mentioned regarding the **so-called inquiry** conducted by the Tehsildar Kishtwar, which Tehsildar Kishtwar has tried to convey it to the respondent through a letter bearing No. 75/JC/TK dated

10.02.2025. Strangely the impugned order simply reflects that it has been observed that some people on the pretext of demonstration are trying to attract gathering. Reasons for passing the impugned order i.e., **Obstruction of government officials in discharge of their public functions/duties by the public or any person** does not find any mention in the order.

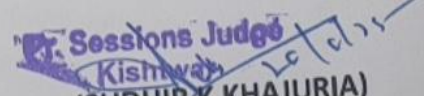
Had the impugned order been passed on the basis of so-called inquiry of the Tehsildar, then the reason mentioned in the impugned order should have been the same as were suggested/reported by the Tehsildar in his letter. Actually, there appears to be no connection between the reasons as mentioned in **Para No. 1 & 2 of the impugned order**, on the basis of which it was passed and the reasons suggested/reported by the Tehsildar in his report.

It appears that letter bearing No. 75/JC/TK dated 10.02.2025 as well as report dated 10.02.2025 by the staff have been managed only to demonstrate that order dated 10.02.2025 passed by the respondent has been passed while complying the mandate of law but minute legal scrutiny of the record shows that while passing the order dated 10.02.2025 mandate of law has not been followed. There is a remarkable difference between terminology **inquiry and inquiry report** because a report can be prepared only after conducting the inquiry but in the present case letter dated 10.02.2025 bearing No. 75/JC/TK (based further on a report dated 10.02.2025 bearing No. NTK/607) has been shown to be an inquiry, as per record of respondent but actually there appears to be no inquiry conducted.

So, keeping in view above discussion and the legal position as well as arguments advanced by the counsel for the petitioner, I am of the considered opinion that order impugned has been passed in a very arbitrary, illegal and negligent manner without following the mandate of law as such order impugned passed by the respondent on 10.02.2025 is set aside as it is against the settled norms of law. Revision Petition is disposed of accordingly. Copy of this order shall be forwarded to the respondent. Record shall also be returned back to the concerned quarter. File shall be consigned to records after due compilation.

Announced

28.08.2025


Sessions Judge
Kishtwar
(SUDHIR K. KHAJURIA)

Principal Session Judge Kishtwar