

GAHC010118412020



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

Case No. : PIL 53/2020

1:TANMAY JYOTI MAHANTA
S/O SRI D.C. MAHANTA, R/O UTTAR PUB GEETA NAGAR, ZOO NARANGI
ROAD, NEAR GITAMANDIR PETROL PUMP, GUWAHATI-20, DIST. KAMRUP
(M), ASSAM

VERSUS

1:THE STATE OF ASSAM AND 3 ORS.
REP. BY THE CHIEF SECRETARY, GOVT.OF ASSAM, DISPUR, GUWAHATI-
781006

2:THE COMMISSIONER AND SECRETARY
HOME AND POLITICAL DEPTT. GOVT. OF ASSAM
DISPUR
GUWAHATI-781006

3:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
HEALTH AND FAMILY WELFARE DEPTT. DISPUR
GUWAHATI-781006

4:THE DIRECTOR GENERAL OF POLICE
STATE OF ASSAM
ULUBARI
GUWAHATI-781007
KAMRUP (M) ASSA

Counsel for the Petitioner(s) : Mr. D. Das, Senior
Advocate.

Ms. T. Parashar, Advocate.

Counsel for the Respondent(s): Mr. D. Saikia, Senior Standing
Counsel,

Govt. of Assam

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. AJAI
LAMBA HON'BLE MR. JUSTICE MANISH
CHOUDHURY**

03.09.2020:
(Ajai Lamba,
CJ)

1. The Court proceedings have been conducted through Video-Conference.
2. Sri Tanmay Jyoti Mahanta has preferred this public interest litigation highlighting that the first case of Coronavirus (COVID-19) was detected in Assam on 31.03.2020. It has been contended that because the directions contained in various orders and notifications issued on behalf of Health and Family Welfare Department and other related Departments have not been complied by the residents of the State, the number of COVID-19 positive cases has gone upto 109040 as on 31.08.2020. It has been highlighted that although the State resorted to lockdown and prescribed various measures for controlling and curbing the spread of Coronavirus by the State agencies, however the State agencies have failed in implementing mandatory use of proper face masks by the residents of the State who move out of their houses. The residents do not maintain proper social distance in public or work places. This has resulted in extensive spread of the Pandemic. In the absence of medicine or vaccine, wearing face masks and following the norm of social distancing are the only measures to avoid the spread.
3. It has been pointed out that vide order issued by Government of Assam, Health and Family Welfare Department, Dispur, Guwahati dated 08.05.2020 the following has been provided:

“XXXXXXXXXXXXXXXXXX

Now, therefore, the Government in Health & Family Welfare Department, in exercise of powers conferred under the said Regulations, hereby direct that the following measures will be complied by the general population within the State of Assam, in order to safeguard human life and health:-

1. *All persons moving for whatsoever purpose and under whatever*

reason/authority in public places like street, hospital, office, market etc. must compulsorily wear 3-ply mask or cloth mask. In absence of mask, a gamocha or any other traditionally woven cloth in at least two layers which completely covers the mouth and nose can also be used.

2.No person/official will attend any meeting/gathering without wearing masks.

3. Any person moving around in personal/ official/ public vehicle must be wearing masks compulsorily.

4.Any person working at any site/ office/ workplace must wear masks.

5. Masks used by one person shall not be used by any other person.

6.Disposable or single use masks shall be properly disposed of by following due procedure. Cloth masks should be washed properly with soap and hot water and dried, after every single use.

It will be the responsibility of the employer to ensure that his/her employees wear the 3-ply mask or cloth mask without fail.

Anybody violating these instructions on use of face cover will be punishable under section 188 of Indian Penal Code. All police officers not below rank of Assistant Sub-Inspector of Police shall compound the offence on payment of rupees five hundred for the first, second and third offence and on payment of one thousand rupees for the subsequent offences.

Fines thus collected shall be deposited into Government Treasury through treasury challan under the Head of Account 0070 - Other Administrative Service -01 - Administration of Justice - 102 - Fines & Forfeitures, after maintaining due records.

(emphasised by us)

XXXXXXXXXXXXXXXXXX"

4. The public interest litigant has impressed on the Court that there is an urgent need for strict and proper direction to the concerned respondent authorities for implementing the use of face masks and maintaining social distance in public and work places. In case any person

violates such directions, punitive measures be used.

5. We are pained at recording that it is common knowledge that the residents of the State in market places and otherwise can be commonly seen without wearing any masks, or wearing masks below nose level which would result in spread of Coronavirus (COVID-19). We further find that people get together in groups in market places and in work environments without caring for their own health or the health of the others. Surely, no resident/citizen has the right to put his own life in jeopardy or put the life of the others at risk. For the said purpose various legislations have been made and in exercise of power various orders have been issued. The orders, however, apparently are being flouted because the punitive action provided thereunder is not being taken against the violators of the Government orders and notifications.

6. Mr. D. Saikia, learned senior Standing Counsel, Health & Family Welfare Department, Government of Assam who is appearing for the respondent states that all such directions issued are being blocked by learned Legal Remembrancer, Assam on one technicality or the other. The Government is in the process of meeting all those objections, however one after the other technical objection is raised.

7. We hereby call upon learned Legal Remembrancer, Assam to show the reasons for being an impediment in implementing measures for safeguarding the health and lives of the public, without any appropriate cause, in the perception of the learned Senior Standing Counsel, appearing for the Health & Family Department, Government of Assam.

8. In the meantime, we hereby direct that anybody violating instructions dated 08.05.2020 (supra) on use of face cover would be punished as suggested vide order dated 08.05.2020. This order is being issued in view of the fact that the hospitals are overflowing with COVID-19 positive patients. The oxygen is already in short supply in the hospitals. The Government is spending from its limited resources and coffers. For the benefit of the poor, COVID-19 tests are being conducted without any cost. In such circumstances, public interest convinces us to pass this order at this stage and juncture. It is only to safeguard the lives of the public that these harsh measures are being provided by virtue of an order of the

Writ Court *de hors* the technicalities, stated to be raised by learned Legal Remembrancer, Assam.

9. We hereby direct the concerned District Heads of Police, Deputy Superintendents of Police and Officers-in-Charge of the Police Stations to be proactive on the streets and check whether the directions issued vide order dated 08.05.2020 (supra) and this Court are complied with or not. In case the directions are violated, fine be imposed as provided in order dated 08.05.2020. The fine imposed on the violators and thus collected be brought to the notice of the Court through the Office of the learned senior Standing Counsel, Health & Family Welfare Department, Government of Assam.

10. We hereby direct the Deputy Commissioners to involve officers/officials from various Departments who would inspect various areas in their respective townships, including Sub- Divisions to find out whether the respective police stations/police officers are complying with directions issued vide order dated 08.05.2020, and this Court by virtue of this order.

11. The direction that is being issued today is considering emergent conditions that have emerged as we have observed on the streets, at this stage, and the dangers associated with the spread of the Pandemic.

12. List on 17.09.2020.

13. Let a copy of this order be given under the signature of the Court Master.

JUDGE

CHIEF JUSTICE

Comparing Assistant