

BEFORE
THE HON'BLE MR JUSTICE UMA NATH SINGH, CHIEF JUSTICE
HON'BLE MR JUSTICE T NANDAKUMAR SINGH
& HON'BLE MR JUSTICE S R SEN

02.11.2015

Mr HS Thangkhiew, learned senior counsel, assisted by Mr PN Nongbri, learned counsel, appears for the petitioner.

Mr KS Kynjing, learned Advocate General, Meghalaya, assisted by Ms Y Shylla, learned GA, represents the State respondents.

Mr R Deb Nath, learned CGC, is for the Union of India.

We have heard learned counsel for parties and perused the pleadings.

This Court had vide a detailed interim order dated 27.05.2015 restrained the culture of 'bandh' and also imposed ban on the publicity of calls of bandh given by Hynniewtrep National Liberation Council (in short 'HNLC'), a proscribed outfit, which has been declared an unlawful Association by the Unlawful Activities (Prevention) Tribunal, Delhi. As a result of that order, the native population of Meghalaya has been able to celebrate the 'Independence Day' for the first time, probably after 1947. The said order has also been affirmed by Hon'ble the Apex Court by dismissing the Special Leave Petitions namely Nos. 16777 of 2015 and 27269 of 2015 vide orders dated 18.9.2015. As there have been complaints of violation of that order in the Garo Hills by the insurgents called 'GNLA', this Court sought the compliance report from the State Government. Vide the letter dated 15.10.2012 a proposal for upgradation of the Police Establishment and Infrastructure in the Garo Hills Range of Meghalaya had been sent to the Special Secretary, Ministry of Home Affairs, Govt. of India which is annexed with the affidavit dated 19.06.2015 sworn by the Director General of Police,

Meghalaya. Thus, the Union Home Ministry, was asked to inform about the action taken on the letter in question. Hence, an Under Secretary to the Government of India filed his affidavit duly sworn on 01.07.2015.

The following being the relevant paragraphs are reproduced as :

“4. That it is respectfully submitted that in terms of 1 and 2 of List II – ‘State List’ – in the Seventh Schedule to the Constitution of India, “Police” and “Public Order” are State subjects. The responsibility of dealing with law and order problems as per the provisions of extant laws rests primarily with the respective State Governments. However, the Union of India assists the Governments of North Eastern States including Meghalaya in a variety of ways like sharing of intelligence, sending advance alert messages and advisories, deployment of Central Armed Police Forces including Rapid Action Force on specific requests, modernization of State Police Forces, re-imburement of Security related expenditures, sanction of India Reserve Battalion and declaring the insurgent groups/outfits as Unlawful association under UAPA, 1967 etc..

5. That it is respectfully submitted that major militant outfits, namely, Garo National Liberation Army (GNLA) and Hynniewtrep National Liberation Council (HNLC), a Khasi Militant group are active in the State of Meghalaya. The above outfits are extortionists who indulge in illegal and unlawful activities including abduction, extortions from shopkeepers, businessmen and Coal merchants, killings (of innocent people as well as security personnel), prevention of developmental activities, etc. the militant outfits of the neighbouring States like ULFA(I), NDFB(S), UALA, ANLA and NSCN/IM also have their ‘Comand Structure’ in Garo Hills of the State of Meghalaya.

6. That it is respectfully submitted that in order to curb and control the unlawful activities perpetrated by militant/insurgent groups in the State of Meghalaya, Ministry of Home Affairs has declared the GNLA as “Terrorist Organization” under the provisions of Unlawful Activities(Prevention) Act, 1967 vide Notification No.62(E) dated 12.1.2012. Similarly, Hynniewtrep National Liberation Council(HNLC) of Meghalaya has been declared as “Unlawful Association” under the provisions of Unlawful Activities(Prevention) Act, 1967 vide Notification No.2923(E) dated 16.11.2014 issued by the Ministry of Home Affairs. The Notification dated 16.11.2014 has been adjudicated by the Unlawful activities(Prevention) Tribunal on 12.5.2015 confirming the ban on HNLC for a period of 5 years from 16.11.2014 to 15.11.2019.

7. That it is respectfully submitted that in order to curb the unlawful activities perpetrated by the insurgent groups

including HNLC in the State of Meghalaya and to strengthen the security of the State, the Ministry of Home Affairs has taken various steps which includes sustained counter-insurgency operations by the Central Armed Police Forces(CAPFs) against those armed groups who continue to indulge in unlawful activities including killing of innocent people, and peace initiative/talks with those groups who abjure the path of violence and seek solution of their grievances within the framework of Constitution of India. The Government of India and the State Government of Meghalaya have signed MoU on 24.9.2014 with the ANVC(Achik National Volunteer Council) of Meghalaya and its breakaway groups ANVC/B. Both Groups have formally dissolved in the disbandment ceremony organized by the State Government on 15.12.2014.

8.That it is respectfully submitted that in order to supplement the efforts of the State Government of Meghalaya for maintaining peace and Law & Order in the State, 79 Coys of CAPFs have been deployed by the Ministry of Home Affairs, out of which, 54 Coys are performing Border Guarding duties and remaining 25 Coys are deployed in the State for Internal Security duties. Besides, 6 teams of CoBRA are also deployed in Meghalaya to check insurgent activities. As and when the State Government of Meghalaya seeks assistance of Central Armed Forces for maintaining peace and law & order, the same is provided keeping in mind requirement of the Security Forces in other parts of the country.

9.That it is respectfully submitted that offices/establishments under the administrative control of Ministry of Home Affairs as well as offices of Central Ministries situated in the State of Meghalaya remain open for the general public even during the bandh called by the insurgent outfits including HNLC etc. and these offices functions normally”.

Thereafter, the same Under Secretary, namely, Mr Sanjay Kumar filed another affidavit dated 11.08.2015 wherein, inter alia, he has provided the details of measures taken by the Central Government to help the State Government for controlling the situation. Paragraphs 3 – 6 which contain the pertinent facts read as:

“3. That it is respectfully submitted that Ministry of Home Affairs had submitted a Note for seeking approval of Cabinet Committee on Security (CSS) for creation of new Police Stations and upgradation of existing Police Stations in Garo Hills. Cabinet Secretariat returned the said Cabinet Note

with some observations. Meanwhile the State Government of Meghalaya submitted a revised proposal requesting for seeking CCS approval for about Rs. 500 crore for the said purpose. No time frame could be fixed for such an administrative and policy decision requirement financial assistance of this magnitude. The Ministry of Home Affairs has also to take into account financial assistance required by other NE States in order to beef up security needs.

4. That it is respectfully submitted that as per Fourteenth Finance Commission (FFC), the share of States in Central taxes has gone up significantly with consequently reduced fiscal space for the Centre. Due to increase of share of States, no fund has been allocated/provided during the financial year 2015-16 by the Ministry of Finance to create building and housing under Plan component of Modernization of Police Forces Scheme on the ground that the Scheme stands transferred to the States. Similarly, Ministry of Finance has also withheld the funding to a proposal of the Government of Arunachal Pradesh for construction/upgradation of 20 Police Stations in insurgency affected districts Tirap, Changlang and Longding districts of Arunachal Pradesh under Security Related Expenditure Scheme of MHA due to increase of share of States under 14th Finance Commission. Pursuant to the above policy, the State Government may consider to strengthen their Police infrastructure within new pattern of allocation. A copy of the sharing pattern of Central taxes accepted by the Govt. of India and inter-se-share of States in percentage (%) are annexed as Annexure I and II respectively.

5. That it is respectfully submitted that as per Entry No. 1 of List II of the Schedule VII of the Constitution of India, Police and Law & Order is State subjects, therefore, primary responsibility rests with the State Government. The Central Govt., however, is supplementing the efforts of the State Government in maintaining law and order situation on account of insurgency, terrorist and naxalism by way of deploying Central Armed Forces, Modernization of State Police Forces under non-plan MPF Scheme etc.

6. That it is respectfully submitted that in Meghalaya 79 Coys of Central Armed Police Forces (CAPFs) have been deployed by the Ministry of Home Affairs, out of which 54 Coys are performing Border Guarding duties and remaining 25 Coys are deployed in the State for Internal Security duties. Besides, 6 teams of CoBRA are also deployed in Meghalaya in order to supplement the efforts of the State Govt. for maintaining peace and Law & Order.”

Thereafter, the Union Home Ministry, through the Director (North East), Shri JPN Singh, has filed yet another affidavit on 19.10.2015.

Paragraph 4 onwards, of the affidavit provide further details while also answering the queries raised during the course of hearing as :

“4. That, at the outset, it is humbly submitted that the framers of the Constitution of India, in their infinite wisdom, have included matters relating to Public Order and Police in the State List of the Seventh Schedule of the Constitution. Also, the delivery institutions of criminal justice system in India, like the police stations, prosecution branch, jails, etc. function under the supervision of the State Government. Under the Federal structure of the Constitution, the Central Government cannot directly interfere in the functioning of such institutions, but can only issue advisories to the states concerned and supplement their efforts in various ways. Hence, the primary responsibility to maintain law and order lies with the State Government.

5. That, in addition to the Constitutional dispensation mentioned above, it is also necessary to bring to the notice of this Hon’ble Court the fact, that most successful counter insurgency campaigns in India have been led by the state governments with the Central Government supplementing their efforts. The three specific examples of Tripura, which conducted systematic counter insurgency campaign resulting in appreciable improvement in its law and order situation; Punjab, which defeated militancy through state-led campaign; and Andhra Pradesh, which tamed the Maoist insurgency, highlights this fact. Hence, it is submitted that, only when the state government comes up with a concrete action plan to improve law and order, with the full backing of political leadership, there can be significant improvement in law and order situation in a particular state.

6. That, it is further submitted that, in a serious insurgency situation, the Central Government also has a crucial role to supplement the state government’s efforts by providing Central Paramilitary Forces and other security related assistance through central schemes. In this regard, it is submitted that the Ministry of Home Affairs has consistently provided both Central Armed Police Forces as well as financial assistance under difference heads to the State Government of Meghalaya so that the law and order situation in the State improves.

7. That, in this regard it is brought to the kind notice of this Hon’ble Court that the financial assistance provided to the State of Meghalaya under different schemes of the Ministry of Home Affairs, is as under :-

Sl. No.	Name of the Scheme	Financial Year
1.	Modernization of State Police Forces (MPF)	An amount of Rs. 32.18 crore has been provided during 2010-11 to 2014-15 for modernization of State Police. In 2015-16, Rs. 3.48

		<i>crore has been allocated for Meghalaya.</i>
2.	<i>Security Related Expenditure (SRE)</i>	<i>An amount of Rs. 72.82 crore has been provided during 2010-11 to 2015-16 for security related expenditure.</i>
3.	<i>Crime and Criminal Tracking Network & System (CCTNS)</i>	<i>An amount of Rs. 5.62 crore released till 30th September 2015 out of a total amount of Rs. 8.897 crore approved for the project.</i>

8. That, it is submitted that, the assistance under the aforementioned schemes cover a range of items including strengthening of police stations, purchase of weapons, reimbursement of expenditure on counter-insurgency operations, purchase of vehicles for mobility, setting up networking systems at the police station level, etc. It is incumbent upon the State Government to ensure that this assistance is judiciously used to improve the security infrastructure in the State.

9. That, it is further submitted that, in addition, the Ministry of Home Affairs has deployed Central Armed Police Forces for counter-insurgency operations and the level of deployment in Meghalaya has increased over the years. For example, the level of deployment was 22 Companies in 2012, which has gone up to 28 Companies in 2015. It is also a fact that the Ministry of Home Affairs has to factor-in considerations of a large number of states for deployment of Central Armed Police Forces since there is a large demand for such deployment from different states facing internal security problems. However, in spite of this, the deployment in Meghalaya has increased over the years. In addition, the Ministry of Home Affairs has also funded raising 04 India Reserve Battalions by Meghalaya. A proposal to further raise 02 more Battalions in Meghalaya is also under examination. But, the State Government has to effectively utilize the Central Armed Police Forces in counter-insurgency operations since they work under the directions of the local police, who have to provide the requisite leadership.

10. That, it is further submitted that, consequent to devolvement of finances between the Central and State Governments on the recommendations of the 14th Finance Commission, the State Government of Meghalaya has been allocated Rs.3371 crore as its share in Central Taxes in the year 2015-16 compared to Rs.1564.15 crore which was allocated in the year 2014-15. During the next five years starting from 2015-16, the total share of Meghalaya in Central Taxes is going to be Rs.25,413 crores, which is a major increase in central assistance to the State compared to Rs.5816 crore allocated during the 13th Finance Commission period (2010-11 to 2014-15). Hence, the State Government has to make adequate budgetary provisions to

improve the security situation in the State by allocating funds for criminal justice delivery systems in the State.

11. That, it is further submitted that the Ministry of Development of North East Region (M/o DoNER) has provided an amount of Rs.368 crore during the last five years to Meghalaya and so far Rs.17 crore has been provided in the current financial year under NLCPR Scheme for various infrastructure projects prioritized by the Government of Meghalaya which includes an amount of Rs.4.63 crore released in June 2015 against the approved cost of Rs.12.85 crore for the State Police project at Baghmara in South Garo Hills in Meghalaya. Besides, a proposal for financial assistance for the State Police project at Tura in West Garo Hills in Meghalaya at an estimated cost of Rs.13 crore is under process in the M/o DoNER.

12. That, with regard to the transmission of objectionable content through the social media, it is submitted that when such instances come to the notice of the local authorities, they are required to register a case against the culprits under the relevant sections of law. Thereafter, in terms of Section 79(3)(b) of the Information Technology Act, the State Government or its agency should request the intermediaries (social media platforms) to remove or disable access to that material. Hence, it is clear that this task lies squarely with the State Government and its agencies. Alternatively, the State Government can also send such information to Computer Emergency Response Team of India (CERT-IN), which is tasked with the responsibility of exercising oversight in such matters. It is also informed that the Central Intelligence Agencies also monitor objectionable content on the Internet and recommend disabling of such platforms from time to time. However, there are certain technological limitations in completely disabling such systems, since the date content often migrates from one platform to another making it a game of 'hide and seek'. However, the Ministry of Home Affairs would submit to this Hon'ble Court that it would take all necessary measures to disable platforms with unlawful content as and when it receives such information from the State Government/agencies.

13. That, it is submitted that, the Ministry of Home Affairs will review deployment of additional Central Armed Police Forces in Meghalaya after the completion of Bihar elections since, at present, there is no force available for deployment. However, the deployment of additional Central Armed Police Forces, without a proactive security strategy by the State Government, will only yield sub-optimal results."

However, the State Government has not filed any further affidavit after the one dated 19.6.2015 sworn by the Director General of Police Mr Rajiv Mehta.

During the course of hearing today, it is brought to our notice that an officer of the Central Intelligence and a businessman who had been kidnapped for ransom have been killed by the insurgents. As per data supplied by the State Police, in the past, between January, 2015 and October 31, 2015 the insurgents of Garo Hills have abducted 25 civilians, 27 businessmen, 25 employees of private Sector, 5 Government employees and 5 teachers, in total 87, for ransom. It appears that the police have rescued some of them, while a few have managed to escape from the custody. The rest being unfortunate were maimed to death for non-fulfillment of illegal demands. It is also informed that the majority of Garo population reside in villages and they are basically dependent upon agriculture for their livelihood. Though the population is just about 7(seven) lakhs, yet they are not feeling secured and they have to live totally exposed to the mercy of insurgents who raise all kinds of illegal demands including the food and shelter. These poor villagers are forced to cooperate with the insurgents and in doing so, they also have to face the wrath and vengeance of Police. It is also said that even the Police and Civil Administration stealthily fulfill the illegal demands of the insurgents. In the series of heinous offences committed by the insurgents is a latest one of kidnapping of the brother-in-law of the Superintendent of Police, Incharge of High Court Security, who was posted as Block Development Officer in the Garo Hills. His whereabouts are not yet known and, looking to the incidents in the recent past, that the Central Intelligence officer and a businessman were abducted and killed, he needs to be rescued on war footing. Even the Chief Justice and High Court Judges are getting veiled threats through anonymous letters. Members of the Bar also cannot be said to be free from involvement in this exercise. As the kidnapping for ransom and in the event of non-

fulfillment, killings have become a regular feature in the Garo Hills and even the public servants are not being spared despite a heavy allocation of funds by the Central Government to upgrade and modernize the Police force, this Court, as the protector of civil liberties of citizens cannot remain a mute spectator and shy away from its constitutional obligation to protect the fundamental rights guaranteed by Part III in general and under Article 21 of the Constitution of India in particular.

A five Judge Bench of Hon'ble the Apex Court, in the **State of West Bengal and others v. Committee for Protection of Democratic Rights, West Bengal and others, reported in (2010) 3 SCC 571**, vide paragraph 69 has held as under :

“ 69. In the final analysis, our answer to the question referred is that a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liberties of the citizens, this court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly.”

We are also not oblivious of the fact that with great power, comes great responsibility to exercise self restraint especially in the exercise of powers under Article 226 of the Constitution of India, but now since the law and order situation in the Garo Hills has deteriorated beyond redemption, we have no option but to issue certain serious directions in order to protect the civil liberties and fundamental rights of the common citizens as well as the public servants.

Even the Union of India under Article 355 of the Constitution is under the duty to protect the State against external aggression and internal disturbance. A Full Bench of Hon'ble the Apex Court, in *Sarbananda Sonowal v. Union of India and Anr*, had dealt with and

defined the words 'aggression' and 'internal disturbance' and given a wider meaning which includes insurgency of militants, making the life of people insecure and creating fear psychosis.

Hon'ble the Apex Court, in the case of **Nandini Sundar and others v. State of Chattisgarh, reported in (2011) 7 SCC 547** has observed that, where financial assistance is given by the Central Government, it also becomes an obligation to issue directions articulating the manners and objects wherefor the funds are released. Besides, in the case of **Naga Peoples Movement of Human Rights v. Union of India, reported in (1998) 2 SCC 109**, Hon'ble the Supreme Court has ruled that the Union of India can deploy Armed Forces in aid of Civil Administration to maintain public order in the society. Para 24 and 27 of the judgment, being relevant, are reproduced as :

“24. A perusal of Entry 1 of the State List would show that while power to legislate in order to maintain public order has been assigned to the State Legislature, the field encompassing the use of armed forces in aid of the civil power has been carved out from the said entry and legislative power in respect of that field has been expressly excluded. This means that the State Legislature does not have any legislative power with respect to the use of the armed forces of the Union in aid of the civil power for the purpose of maintaining public order in the State and the competence to make a law in that regard vests exclusively in Parliament. Prior to the Forty-second Amendment to the Constitution such power could be inferred from Entry 2 of the Union List relating to naval, military and air forces and any other armed forces of the Union as well as under Article 248 read with Entry 97 of the Union List. After the Forty-second Amendment the legislative power of Parliament in respect of deployment of armed forces of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in aid of the civil power flows from Entry 2-A of the Union List. The expression “in aid of the civil power” in Entry 1 of the State List and in Entry 2-A of the Union List implies that deployment of the armed forces of the Union shall be for the purpose of enabling the civil power in the State to deal with the situation affecting maintenance of public order which has necessitated the deployment of the armed forces in the State. The word “aid” postulates the continued existence of the authority to be aided. This would mean that even after deployment of the armed forces the civil power will continue to function. The power to make a law providing for

deployment of the armed forces of the Union in aid of the civil power in the State does not comprehend the power to enact a law which would enable the armed forces of the Union to supplant or act as a substitute for the civil power in the State. We are, however, unable to agree with the submission of the learned counsel for the petitioners that during the course of such deployment the supervision and control over the use of armed forces has to be with the civil authorities of the State concerned or that the State concerned will have the exclusive power to determine the purpose, the time period and the areas within which the armed forces should be requested to act in aid of civil power. In our opinion, which is contemplated by Entry 2-A of the Union List and Entry 1 of the State List is that in the event of deployment of the armed forces of the Union in aid of the civil power in a State, the said forces shall operate in the State concerned in cooperation with the civil administration so that the situation which has necessitated the deployment of the armed forces is effectively dealt with and normalcy is restored.

27. It is, therefore, not possible to accept the contentions urged by Shri Shanti Bhushan and Dr Dhavan that the Central Act is ultra vires the legislative power conferred on Parliament inasmuch as it is not an enactment providing for deployment of armed forces in aid of the civil power, but is an enactment with respect to maintenance of public order which is a field assigned to the State Legislature under Entry 1 of the State List.”

Thus, the Central Government can enforce Armed Forces (Special Powers) Act, 1958 for the purpose of deployment of Armed Forces in the aid of civil administration in order to restore public order and maintain the law and order. Such deployment of Armed forces of the Union would be only for the purpose of enabling the civil authorities in the State to deal with the situation effectively so that there is a regime of rule of law. Even under the ideal federal system of United States of America, whereas ours is only quasi federal under the Insurrection Act, the President can deploy Armed Forces under certain circumstances including terrorist activities in the States. In the instant case, as the Police and civil authorities, despite the best of their efforts, are not able to control the incidents of kidnapping for ransom and killings on non-fulfillment of illegal demands and the native population is totally exposed to the influence of militancy, and as the funds allocation by the

Central Government has not helped in ameliorating the decline of law and order, we have no option but to direct the Central Government to consider the use of Armed Forces (Special Powers) Act, 1958, in the Garo Hills area and deployment of Armed and Para-military forces to control the situation in the aid of but certainly not under the command of civil and police authorities till life becomes normal and the incidents of rampant kidnapping and killing totally stop. Thus, we direct the Union Home Secretary and the Defence Secretary to ensure compliance by placing this order before the Central Government to consider the use of Armed Forces (Special Powers) Act, 1958 and the deployment of Armed and Para-Military Forces in the Garo Hills area of Meghalaya to control the fast deteriorating law and order situation. We also direct the Principal Secretary in the office of Hon'ble the Prime Minister to place this order before him for perusal and consideration.

As noticed hereinabove, even the Chief Justice and Judges of the High Court are also getting veiled threats that they would have to face the consequence after their retirement. It may not be proper for us to say anything about our security which is, for the present, being looked after by the State. Generally, we put all such anonymous letters into shredders but since two of us are to lay our office in January and February, 2016 and third one in March, 2019, and one cannot claim to be fully safe and secured in the wake of incident of kidnapping of the BDO, brother-in-law of the Superintendent of Police, who is Incharge of High Court security, we expect the Central Government to give its response on this issue as well.

Let this order be communicated by fax today to Principal Secretary in the office of Hon'ble the Prime Minister, Union Home Secretary, Union Defence Secretary and Chief Secretary, and Director

General of Police of Meghalaya, for compliance, in addition to issuance through usual mode as provided under the High Court Rules.

List on 18.11.2015.

JUDGE

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CHIEF JUSTICE

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