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2026:GAU-AS:15603

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

Case No. : WP(C)/5734/2026

SUBODH BARMAN
S/O SRI BIJOY BARMAN, R/O HOUSE NO. 13, LALIT NIWAS, CHANDAN NAGAR, BELTOLA, P.O. - BELTOLA, P.S. - HATIGAON, DISTRICT - KAMRUP METRO, ASSAM, PIN - 781028.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF ASSAM, HOME AND POLITICAL DEPARTMENT, DISPUR, GUWAHATI, KAMRUP METRO, ASSAM, PIN - 781006.

2:THE BODOLAND TERRITORIAL COUNCIL (BTC)
REPRESENTED BY ITS PRINCIPAL SECRETARY
BTC SECRETARIAT
BODOFA NWGWR
KOKRAJHAR
BODOLAND TERRITORIAL REGION
ASSAM PIN -783370.

3:THE DISTRICT COMMISSIONER-CUM-DISTRICT MAGISTRATE
UDALGURI
P.O. AND P.S. - UDALGURI
DISTRICT - UDALGURI
ASSAM PIN -784509.

4:THE SENIOR SUPERINTENDENT OF POLICE
UDALGURI
P.O. AND P.S. - UDALGURI
DISTRICT - UDALGURI
ASSAM PIN -784509.

5:THE SUPERINTENDENT OF EXCISE

UDALGURI
P.O. AND P.S. - UDALGURI
DISTRICT - UDALGURI
ASSAM PIN -784509.

6:THE BLOCK DEVELOPMENT OFFICER
UDALGURI DEVELOPMENT BLOCK
P.O. AND P.S. UDALGURI
DISTRICT - UDALGURI
ASSAM PIN -784509

Advocate for the Petitioner : MR. S K TALUKDAR, MR. J M A CHOUDHURY,K G CHOWDHURY

Advocate for the Respondent : GA, ASSAM, SC, BTC

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

14.10.2026

1. Heard Mr. S.K.Talukdar, learned counsel for the petitioner. Also heard Ms. B. Bora, learned Standing Counsel for the BTC representing the respondent Nos. 2 and 6, and Ms. U. Das, learned Additional Senior Government Advocate, Assam, representing the respondent Nos. 1, 3, 4 and 5.

2. The present writ petition is directed against the order dated 08.10.2026, passed by the District Magistrate, Udalguri, in exercise of powers under Section 163(1) and (2) of Bharatiya Nagarik Suraksha Sanhita 2023, directing closure of the petitioner's establishment, namely, "River Resort" at Kahibari Dhupguri, Udalguri, until further orders.

3. The petitioner claims to be operating the resort and its restaurant under

valid licenses issued by the competent authority. The impugned order has been passed based on reports received from police authorities, the District Child Protection Officer, the Executive Magistrate, and the Excise Department, alleging various unlawful activities on the resort premises.

4. Mr. S. K. Talukdar, learned counsel for the petitioner, contends that the order has been passed ex parte, without issuing any prior notice or affording him an opportunity of hearing, and that the materials relied upon by the District Magistrate were never furnished to him. It is further contended that the closure of the establishment has caused serious financial hardship to the petitioner and has adversely affected the livelihood of the employees engaged herein. Such action, according to Mr. Talukdar, violates Articles 19(1)(g) and Article 21 of the Constitution of India.

5. Mr. Talukdar, learned counsel, further submits that the power under Section 163 BNSS is preventive in nature and can be exercised only when the statutory conditions warrant immediate intervention. Reliance is placed on the decisions of the Supreme Court in **Modu Limaye vs. Sub-Divisional Magistrate, Monghyr and others** reported in **1970 (3) SCC 746** and in **Re. Ramlila Maidan Incident** reported in (**2012) 5 SCC 1**, to contend that the exercise of preventive powers must remain within the limits prescribed by law and must be subjected to appropriate judicial scrutiny. It is also submitted that the petitioner has already submitted a representation dated 09.10.2026 before the District Magistrate seeking recall of the impugned order, but the same has not been considered.

6. This Court has given anxious consideration to arguments advanced by Mr. Talukdar, learned counsel, as well as the State Counsel, and has perused the impugned order and the authorities cited at bar.

7. There is no iota of doubt in the minds of the Court that the power under Section 163 BNSS is intended to meet situations requiring urgent preventive action. In a situation of urgency, an order may be passed ex parte, when the statutory requirements are satisfied. The mere fact that an order has been passed without prior notice, therefore, shall not render such an order invalid on that ground. However, the exercise of such power cannot be divorced from statutory safeguards governing its exercise, duration and reconsideration. An order of this nature, particularly one that completely suspends the commercial activity of an establishment, must remain amenable to reconsideration in accordance with law.

8. In **Madhu Limaye** (Supra), the Supreme Court recognized the necessity of preventive powers in urgent situations while emphasizing that their exercise must be justified by circumstances warranting such intervention and must remain open to appropriate scrutiny. Similarly, principles discussed in **Ramlila Maidan Incident** (Supra) underscore the necessity of balancing the requirement of public order with the rights of persons affected by state action.

9. However, at this stage, this Court is not required to undertake an examination of the factual allegations forming the basis of the impugned order. In the present case, the impugned order is an ex-parte preventive order. The petitioner has already approached the authority which passed

the order seeking its recall.

10. Section 163 of the BNSS provides a mechanism for rescinding or altering an order passed under the said provision and contemplates an opportunity of hearing for the person concerned, in accordance with the prescribed statutory procedure.

11. In the considered view of this court, the questions whether the circumstances continue to justify the closure of the resort, whether the preventive measures require modification and whether any less restrictive measure would adequately address the apprehended danger, are required to be considered by the competent Magistrate at the first instance upon hearing the petitioner and examining the relevant matters. It is needless to say that such determination shall always be subject to judicial scrutiny by a competent authority/Court

12. This Court is also conscious that the impugned order directs closure of the establishment "until further orders". However, the order must operate subject to the limitations prescribed under Section 163(4) of the BNSS, read with the proviso thereto.

13. The statutory restriction regarding the period for which an order may remain in force cannot be displaced by use of the expression "until further orders". Any continuation beyond the prescribed period under Section 163(4) of the BNSS, including its proviso, governing such extension shall be illegal.

14. Having regard to the nature of the impugned order and the fact that the petitioner's representation dated 09.10.2026, which is stated to be

pending consideration, this Court is of the view that ends of justice would be met by requiring the competent authority to consider the petitioner's grievance expeditiously, rather than examining the disputed factual aspects at this stage in the present proceeding. Such a course would also enable the authority to consider the relevant reports, the petitioner's explanation, and the necessity and proportionality of continuing preventive measures.

15. Accordingly, without expressing any opinion on the merit of the allegation against the petitioner, this writ petition is disposed of with the following directions.

I. The petitioner shall be at liberty to submit a formal application before the District Magistrate, Udalguri under Section 163(5) of the BNSS seeking rescission or modification of the order dated 08.10.2026.

II. The District Magistrate shall consider such application, after affording the petitioner a reasonable opportunity of hearing and permitting him to place his explanation and relevant documents on record.

III. The petitioner shall also be afforded an opportunity to respond to the materials relied upon against him, necessary for an effective consideration of his application.

IV. Thereafter, the District Magistrate shall pass a reasoned order in accordance with law, preferably within 10 days, and in any case within two weeks from the date of receipt of a copy of this order

along with the application that may be filed by the petitioner under section 163(5) of the BNSS.

V. The decision shall be taken independently, upon consideration of the relevant materials, the petitioner's explanation, and the law holding the field.

VI. In considering the application, the District Magistrate shall examine whether circumstances warrant continuing the closure in its existing form or whether the apprehended danger, if any, can be adequately addressed through appropriate conditions and other lawful preventive measures. The statutory limitations regarding the duration of an order under section 163 of the BNSS shall be strictly adhered to.

VII. While parting with the record, it is made clear that this Court has not expressed any opinion on the truth or otherwise of the allegations concerning the resort, the petitioner's responsibility or necessity of preventive action. All such matters are left open for consideration by the competent authority in accordance with law.

16. With the aforesaid observation and direction, this writ petition is disposed of. There shall be no order as to costs.

JUDGE

Comparing Assistant