
(2007) 12 OHC CK 0018
In the Orissa High Court

Kasinath Sahoo

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 17-12-2007

Acts Referred:

Advocates Act, 1961 — Section 30
Constitution of India, 1950 — Article 226

Citation : (2008) 105 CLT 440 : (2008) 1 OLR 438

Hon'ble Judges : C.J.MANUOR04652007.htm, J;B. Mahapatra, J

Bench : Division Bench

Judgement

1. Heard learned counsel for the parties.

This Public Interest Litigation was filed in 1994 by one Kasinath Sahoo with a prayer to issue a direction upon the State Government to bring into effect the provisions of the Orissa Hindu Religious Endowments Act, 1969.

2. The facts of the case are that Orissa Hindu Religious Endowments Act, 1969 has been enacted after it received the assent of the President of India on 22nd January, 1970 and the same was published in an Extraordinary issue of the Orissa Gazette on 4th February, 1970. Under Sub-section (3) of Section 1 of the said Act it has been provided that it shall come into force on such date as the State Government may, by notification, appoint in that behalf. This PIL has been filed with a prayer that though the said Act has been enacted and assented in 1970, the said Act has not been brought into effect by the State Government by notification in that behalf in terms of Sub-section (3) of Section 1 of the said Act.

3. In this matter, a counter affidavit has been filed by the State. In paragraph 4 of the said counter affidavit it has been stated that there is already an Act called the Orissa Hindu Religious Endowments Act, 1951 and a comparative study in 1951 Act and 1969 Act does not show that any improvement has been made in 1969 Act. The provisions of both the statutes are almost identical in respect of important items in the endowment administration. Therefore, the State is prima facie of the opinion that there is no point in adopting the subsequent statute and

the provisions of 1951 Act are still continuing.

A question arises whether in a situation like the present one, this Court in exercise of its power under Article 226 of the Constitution can compel the State to bring into effect the provisions of 1969 Act.

4. Similar question came up for consideration before the Hon''ble Supreme Court in the case of A.K. Roy and Others Vs. Union of India (UOI) and Others, . In that case it was found that Section 3 of the Constitution (44th Amendment) Act, 1978 has not been brought into force by the Central Government. The question was whether the Court can issue a mandamus to the Central Government to bring into force any part of the Constitution Amendment. The majority opinion of the Court was delivered by Hon''ble Chief Justice Chandrachud. In paragraph 52 at page 732 of the report, the learned Chief Justice said as follows:

...But we find ourselves unable to intervene in a matter of this nature by issuing a mandamus to the Central Government obligating it to bring the provisions of Section 3 into force. The Parliament having left to the unfettered judgment of the Central Government the question as regards the time for bringing the provisions of the 44th Amendment into force, it is not for the Court to compel the Government to do that which, according to the mandate of the Parliament, lies in its discretion to do when it considers it opportune to do it....

5. The same principle has been followed by the Hon''ble Supreme Court subsequently also in the case of Aeltemesh Rein, Advocate, Supreme Court of India Vs. Union of India (UOI) and Others, . In paragraph 5 at page 1770 of the report, the learned Judges, after quoting elaborately from the judgment of the Supreme Court in A.K. Roy's case held that as long as the majority view taken by the Supreme Court in A.K. Roy's case holds the field, it is not open to the Supreme Court to issue a writ of mandamus directing the Central Government to bring into force Section 30 of the Advocates Act. The learned Judges held that the Court can only issue a mandamus to the Central Government to consider within a period of six months whether Section 30 of the Advocates Act should be brought into force or not.

6. Following the said decision, as we must, this Court also directs the State Government to consider within a period of six months from today whether the provisions of 1969 Act can be brought into force or not.

With the above direction, this PIL is disposed of.

Urgent certified copy of the order be granted on proper application.