

**(1973) 03 OHC CK 0010**

**In the Orissa High Court**

**Case No :** Original Jurdn. Case No. 1695 of 1968

Kedarnath Guru Mohapatra and Others

APPELLANT

Vs

The State of Orissa

RESPONDENT

**Date of Decision :** 13-03-1973

**Acts Referred:**

Constitution of India, 1950 — Article 14, 19(6)

Sri Jagannath Temple Act, 1954 — Section 15B(1), 30A(5), 4(1), 8A

**Citation :** AIR 1974 Ori 75

**Hon'ble Judges :** B.K. Patra, J;B. Panda, J

**Bench :** Division Bench

**Advocate :** Sadasiv Mishra and Ranjit Mohanty, for the Appellant; Standing Counsel, for the Respondent

## Judgement

Patra, J.—The petitioners--some of the recorded Sevaks of Shree Jagannath Temple at Puri -- assail in this writ petition the validity of various amendments brought about in the Shri Jagannath Temple Act, 1954 (Orissa Act 11 of 1955) by the various sections of the Shri Jagannath Temple (Amendment) Act, 1968 (Orissa Act 17 of 1968).

2. The ancient temple of Lord Shree Jagannath Puri has ever since its inception been an institution of unique national importance. The Orissa legislature first attempted to control public Hindu Religious endowments including the Shri Jagannath temple at Puri by passing the Orissa Hindu Religious Endowment Act, 1939 (Orissa Act IV of 1939). Although this Act has undergone some amendments from tune to time, provisions made therein were not considered sufficient to control the administration of the Shree Jagannath temple and its endowments. The Legislature, therefore, thought it expedient that a special legislation was necessary for this temple in view of its unique character and importance. As a first step in this direction, the Orissa Legislature passed an Act entitled the Puri Shri Jagannath Temple (Administration) Act, 1952 (Orissa Act XIV of 1952) with a view inter alia to prevent mismanagement of the temple and

its endowments by consolidation of the rights and duties of Sevaks, Pujaris and such other persons connected with the Seva, Puja and Management thereof. This Act was subsequently amended by the Shri Jagannath Temple (Administration Amendment) Act, 1954 (Orissa Act 1 of 1954). Section 3 of the Act (Orissa Act 14 of 1952) has conferred power on the State Government to appoint a Special Officer for the preparation of a record consolidating the rights and duties of different Sevaks and Pujaris and such other persons connected with the Seva, Puja and management of the temple or its endowments. Provision was made u/s 5 for publication of the records prepared by the Special Officer and it further provided that on publication the records shall be final and shall not be called in question in any Court of law, except in the manner provided in Section 6. u/s 6, any person aggrieved by any entry in the record was given liberty to prefer objections before a District Judge or any other Judicial Officer not below the rank of a District Judge specially appointed in that behalf. Such Judge was to hear the objections and to communicate his orders to the State Government who, in their turn, were to cause modifications, if any, in the record of rights to the extent indicated in the order.

3. In the year 1954, the Legislature of the State of Orissa enacted the Shri Jagannath Temple Act, 1954 (Orissa Act 11 of 1955) (hereinafter referred to as the principal Act) with a view to provide for,

"better administration and governance therefore in supersession of all previous laws, regulations and arrangements, having regard to the ancient customs and usages and the unique and traditional nitis and rituals contained in the Record of Rights prepared under the Puri Shri Jagannath Temple (Administration) Act, 1952."

That Act has undergone several amendments. The validity of the amendments brought about by the Shri Jagannath Temple (Amendment) Act, 1968 (Orissa Act 17 of 1968) (hereinafter referred to as the Amending Act) is the subject-matter of this writ application.

4. The impugned provisions may now be enumerated. Section 4 of the Principal Act defines certain expressions. The expression "Niyoga" had not been defined in the Principal Act.

(1) By Section 2 of the Amending Act, Section 4 (1) of the Principal Act was amended by introducing Clause (a-1) defining the expression "Niyoga" to mean--  
"an association of Sevaks recognised as such by the Committee".

The association of a particular group of Sevaks is called a "Niyoga", and these Niyogas had in the past obtained recognition of the ruling powers as well as of the successive Superintendents of the temple, and recognised as such in the Record-of-Rights prepared under the 1952 Act. Some of these Niyogas own property. The effect of the definition is to make their existence dependent on recognition by the Committee. It is contended that as there are no substantial

provisions to which the aforesaid definition can apply, the amendment is wholly unnecessary and violates their rights under Article 19(1) (b) and (c) of the Constitution.

(2) By Section 2 of the Amending Act, a new Clause (d-1) was added to Section 4 (1) of the Principal Act to define the expression "Sevak" to mean

"any person who is recorded as such in the Record-of-Rights or is recognised by a competent authority as a Sevak or his substitute or has acquired the rights of a Sevak by means of any recognised mode of transfer and includes a person appointed to perform any niti or seva under Clause (i) of Sub-section (2) of Section 21."

The objection to this provision is that the definition of "Sevak" is contrary to the finality attached to the Record-of-Rights prepared under the 1952 Act, inasmuch as the definition would give scope for introduction of additional Sevaks to the existing class for the same Seva so as to share and encroach upon the rights enjoyed by the recorded Sevaks, and subjects the linear descendants of a recorded hereditary Sevak to recognition by a "competent authority", which is undefined and left vague in the Act. This definition is violative of the fundamental rights of property of the recorded Sevaks and their progenies.

(3) By Section 5 of the Amending Act, a new Section 8-A is added to the Principal Act which runs thus:

"8-A. (1) Where the Raja of Puri claims for himself any right in addition to those recorded in the Record-of-Rights he may make an application to the State Government in that behalf.

(2) Upon receipt of an application under Sub-section (1) the State Government may, after making such enquiry as they deem necessary and after giving the Raja of Puri an opportunity of being heard, make such order as they deem fit.

(3) The Raja of Puri may, if he is aggrieved by an order made under Subsection (2), prefer an appeal before the High Court within thirty days of the date of communication of the order to him.

(4) All orders passed under Sub-section (2) shall, subject to the decision, if any, made in an appeal under Sub-section (3), be final."

The validity of these provisions is impugned on the ground that the Raja of Puri stands in the same position as any other Sevaks and to confer on him special and discriminatory benefits to claim for himself any right in addition to those recorded in the Record-of-Rights on a petition of claim to the State Government with a right of appeal to the High Court is contrary to the finality of the Record-of-Rights prepared under the 1952 Act. There is also no rational nexus for conferring such benefit on the Raja of Puri to the exclusion of other Sevaks. This provision is, therefore, violative of fundamental rights of other Sevaks and classes of Sevaks being hit by Article 14 of the Constitution. In any event, there

is no correlation or nexus with the object to be achieved. That apart, this provision cannot co-exist along with Section 3 of the Principal Act.

(4) Section 8 of the Amending Ad has introduced a new Section 15-B in the Principal Act. That section runs thus :

"15-B. (1) The Administrator may on an application made in that behalf by any Sevak, other than the Raja of Puri, and after making an enquiry in the prescribed manner, make an order effecting any change in any entry made in the Record-of-Rights on all or any of the following grounds, namely,--

(a) that such change is necessary in view of any new materials which have come to notice; or

(b) that any entry therein bears no relationship to the existing facts; or

(c) that any such entry is incomplete or incorrect:

Provided that no order under this sub-section shall be made without giving the parties concerned a reasonable opportunity of being heard.

(2) Any person aggrieved by an order under Sub-section (1) may, within thirty days from the date of communication of the order to him, prefer an appeal before the State Government and thereupon the State Government may, after making such enquiry as may be necessary and after giving the parties concerned an opportunity of being heard, make such order as they deem fit.

(3) No order made under Sub-section (1) or under Sub-section (2) shall debar any person aggrieved thereby from establishing his right, if any, in a Court of competent jurisdiction, but no Court shall have power to stay the operation of the said order pending the final disposal of the proceedings before such Court or of any appeal or application arising therefrom or in relation thereto."

This provision is said to suffer from the same infirmity from which the newly added Section 8-A suffers. It is a colourable piece of legislation and has the effect of unsettling the settled and vested rights recorded in the Record-of-Rights prepared under the 1952 Act.

(5) By Section 14 of the Amending of the Act, Sub-section (2) of Section 30-A of the Principal Act has been substituted by new Sub-sections (2) to (5). Exception is taken to the validity of Clause (b) of Sub-section (5) which runs thus:

"(5) Whoever--

(a) xx xx xx (b) sells or offers" or exposes for sale any Mahaprasad at any place within the premises of the temple, other than the place allotted by the Committee for the said purpose; or

XX XX XX

shall on conviction be punishable with" fine which may extend to fifty rupees."

It is contended that under the Record-of-Rights, the rights of certain Sevaks to sell Mahaprasad at specified places inside the temple has been recognised and recorded and that right is sought to be taken away by the impugned provisions under which the Committee has been given unbridled power to select any place it likes within the temple for the sale of Mahaprasad by the Sevaks and to allot to Sevaks for such purpose any place that the Committee selects. Apart) from the fact that such a provision conflicts with the finality given to the Re-cord-of-Rights it also violates the fundamental rights to property of the Sevaks.

5. The Joint Secretary of the Law Department on behalf of the opposite party has filed a counter affidavit contending that all the impugned provisions have been validly enacted and that they do not suffer from any constitutional infirmities. According to him it was considered expedient to define the expression "Niyoga" and because the said expression occurs at many places in the Record-of-Rights. It is an expanding definition and does not in any way affect the rights of the petitioners. That definition does not render the existing associations non-existent as is alleged in the petition since these associations have already been recognised by the Committee on the basis of the relevant entries in the Record-of-Rights. The associations already recognised cannot be derecognised on the basis of the definition under the Amending Act. Hence the contention that it violates the rights of the petitioners is untenable. Since the Act (Amending Act) does not in any way prohibit formation of association, Article 19(1)(c) not attracted.

6. Similarly with regard to the new Clause (d-1) defining the expression "sevak" it is said that this amendment does not in any way infringe the rights of the petitioners recognised under Act 14 of 1952 and that consequently they have no cause to complain. With regard to Sections 5 and 8 of the Amending Act by which Sections 8-A and 15-B are incorporated in the Principal Act it is stated that the Raja has been recognised as a class by himself and hence if two different sets of procedures are adopted--one for the Raja and the other for the other Sevaks of the temple as envisaged in the new Sections 8-A and 15-B, they cannot be struck down as discriminatory. Assuming that the right to make representation is a fundamental right, the right to object or make representation to a particular authority or a forum is not a fundamental right. In respect of the objection taken to the validity of clause (b) of Sub-section (5) of Section 30-A introduced by Section 14 of the Amending Act it is stated that it is based upon a misconception of right guaranteed in the Constitution. A person may have a right to sell Mahaprasad but such right is subject to the provision of Article 19(6) and consequently no person can claim the right to sell Mahaprasad at any place in the temple without any restriction, regulation or reservation. The impugned provision does not in any way affect any fundamental rights and consequently is protected by Article 19(6) of the Constitution.

7. It may be stated at the outset that in the writ application, exception had been taken to the validity of Clauses (e) and (f) of Sub-section (1) of Section 6 of the

Principal Act. Section 6 provides for the constitution of a Committee for the management of the temple and it provided in Clauses (e) and (f) that three persons were to be nominated as members from amongst the Sevaks belonging to the class (1) Pujapandas, (2) Pasupalaks and (3) Pratiharis--one person being nominated from each of the three categories and that another person was to be nominated by the State Government from amongst the Sevaks not belonging to any of the aforesaid three categories. But during the pendency of this writ application, these two clauses were amended and the amended clause as it stands provides that four persons are to be nominated by the State Government from among the Sevaks of the temple. In view of this amendment, brought about by the Orissa Act 17 of 1969, the objection advanced in respect of the old Sub-clauses (e) and (f) disappears and no exception is taken to the amended Sub-clause (e).

8. The expression "Niyoga" as is popularly understood is nothing but an association of Sevaks doing a particular type of Seva in the temple. The right to do Seva in the temple has been recognised to be a hereditary one. It may be that in the ancient times, the Superintendent of the temple was dealing with individual Sevaks, but as time went on and the family of one particular Sevak increased, all the members of the family claimed to perform the particular Seva which hereditarily belonged to the family. In course of time as the members increased, the persons doing a particular Seva formed themselves into an association and this association came to be known as a "Niyoga". As the Special Officer records in his report, although there is a popular notion amongst many that these Niyogas, are thirty-six in number, popularly known as the Chhatisa Niyoga, yet the enquiry by the Special Officer revealed that there are more than 140 kinds of Sevas in the temple with the result that the number of Niyogas or associations has considerably increased, over and above the traditional thirty-six. The Record-of-Rights would show that various properties inside the temple are recorded in the names of Niyogas. By way of illustration, reference may be made to page 238 of Part II of the Record-of-Rights where as against plot No. 69, it is stated that on the southern side of the plot there exists the Puja Panda Niyoga School. In regard to plot No. 89, occurring at page 241 it is stated that Sevaks belonging to the Bhattar Sebayat Niyoga perform the Seva of the Kalpabata standing on this plot and that on behalf of the Niyoga, one Phikari Panda makes collections from the pilgrims and pays Rs. 50/- to the Niyoga. There are several such entries spread over the Record-of-Rights. The history of these Niyogas therefore is as ancient as the temple itself. Mr. Mohanty, learned Advocate appearing for the petitioners is therefore right in his contention that the existence of these Niyogas cannot be made to depend upon the recognition by the Managing Committee of the temple. It is conceivable that with the passage of time, new types of service may have to be performed in relation to the deity Shri Lord Jagannath and new associations may have to be formed. It may perhaps be reasonable in respect of such new associations to provide that they should be subject to recognition by the Committee. But to insist that associations or

Niyogas existing from the ancient times and recognised in the Record-of-Rights should depend for their future existence on recognition by the Committee appears to us to be an unreasonable restriction. In defining the expression "Sevak", the Legislature has taken care to say that the expression means any person who is recorded as such in the Record-of-Rights or is recognised by a competent authority etc., thereby leaving the present Sevaks un-affected. A similar definition should have been adopted in respect of the expression "Niyoga". The present definition of the expression "Niyoga" therefore appears to us to be unconstitutional and should be struck down.

9. No such infirmity in our opinion is discernible in the definition of the expression Sevak. This definition preserves the rights of the existing Sevaks. It only seeks to bring within its fold (1) a person recognised by a competent authority as the Sevak, (2) his substitute, (3) a person who has acquired the rights of a Sevak by means of any recognised mode of transfer, and (4) a person appointed to perform any niti or Seva under Clause (i) of Sub-section (2) of Section 21, Under the last mentioned provision, power has been given to the Administrator of the temple to get the particular Niti or Seva performed by any person in the absence of the Sevak or his substitute or on the failure on the part of such person to perform his duties, it is a matter of common experience that on certain occasions, performance of Niti in Shri Jagannath temple is held up for a considerable length of time either because a particular Sebait whose turn it is to perform the particular Seva does not turn up or some sort of strike is resorted to. It is only reasonable that in such circumstances, the rituals of the temple should not be held up due to the intransigent attitude of a few Sevaks. The provision of Section 21 (2) (i) is therefore a wholesome one and the substitute who is temporarily appointed to perform the Seva should appropriately come within the definition of Sevak. Exception is taken to the fact that there is no indication in the Principal Act as to who is the competent authority referred to in the definition of Sevak. Section 5 of the Act provides that the governance of the temple and its endowments shall vest in a Committee called the Shri Jagannath Temple Managing Committee and that it shall be entitled to take and be in possession of all movables and immovable properties and properties of all other kinds belonging to the temple. There is also an Administrator in whom certain powers are vested. In particular, u/s 21-A of the Amending Act, the control over Sevaks is vested in the Administrator. Section 31 gives wide powers to the Committee to make regulations to provide for the manner in which the duties imposed on it under the Act and its functions thereunder shall be discharged. Provision can therefore be made under the regulation as to who would be the competent authority referred to in the definition of Sevak. We, therefore, find nothing objectionable in the definition of Sevak and see no reason to strike it down.

10. The amendments brought about by Section 5 and Section 8 of the Amending Act by adding Sections 8-A and 15-B respectively to the Principal Act may be taken up together. While considering the validity of these two new sections it has

to be borne in mind that by Section 3 of the Principal Act, the Puri Shri Jagannath Temple (Administration) Act, 1952 is deemed to be a part of the Shri Jagannath Temple Act, 1955. That Act of 1952 provides in Section 6 thereof that any person aggrieved by an entry in the Record-of-Rights prepared by the Special Officer might prefer objections before the District Judge of Puri and after receipt of the objections such District Judge or any other Judicial Officer being not below the rank of a District Judge specially appointed by the State Government was to hear objections and pass necessary orders and that such orders were not to be challenged in any Court of law. If, as a result of the orders passed by the District Judge, any change was to be effected in the Record-of-Rights, such change was to be made in the Records. It is, therefore, argued that when the Record-of-Rights attained finality by virtue of Section 6 of the 1952 Act which now forms a part of the Shri Jagannath, Temple Act, 1955, the provisions in Sections 8-A and 15-B which disturb such finality are not valid. The second argument is that the Raja of Puri being a Sevak like any other Sevak in the temple there should not have been two different provisions prescribing two different procedures for bringing about changes in the Records relating to their respective rights and that consequently the provisions are discriminatory. So far as the second argument is concerned, there is no substance in it. The Raja of Puri is the Adya Sevak of Lord Jagannath. As Adya Sevak, he enjoys several privileges and rights in the Seba of Lord Jagannath which other Sevaks do not enjoy. Before the enactment of the Shri Jagannath Temple Act, the Raja of Puri and his predecessors had two distinct rights with respect to the temple. In the first: place, they were the Adya Sevaks and as such had certain rights and privileges and perquisites. The Act has not touched the Raja's rights of Adya Sevak but has only deprived him of the sole management of the temple. The power of recognition of the various other Sevaks in the temple, vested in the Raja before such rights were codified in the Record-of-Rights, If, having regard to the unique position which the Raja as Adya Sevak occupies in the affairs of the temple, a special provision is made to regulate his rights, it cannot be challenged as discriminatory on the sole ground that identical provisions had not been made in respect of the other Sevaks. That apart, as against an adverse order passed against the Raja, under Sub-section (2) of Section 8-A, he is given the right to prefer an appeal before the High Court. Likewise as against an adverse order passed against a Sevak under Sub-section (1) of Section 15-B he has been given the right to prefer an appeal to the State Government under Sub-section (2) thereof and any Sevak aggrieved by an order passed against him either under Sub-section (1) or Sub-section (2), has been given the right to file a suit in a Court of competent (jurisdiction which automatically carries with it the right of appeal to higher forums. The challenge to these two impugned provisions on the ground that Article 14 is contravened must, therefore, be rejected.

11. The next question is whether either or both the provisions affect the finality given to the Record-of-Rights u/s 6 of the Act of 1952. Taking Section 15-B first, it provides that any Sevak other than the Raja may make an application to the



Administrator to effect any change in the entry made in the Record-of-Rights on any of the following grounds:

(a) that such change is necessary in view of any new materials which have come to notice; or

(b) that any entry therein bears no relationship to the existing fact; or

(c) that any such entry is incomplete or incorrect.

It is conceded on behalf of the petitioners that Clauses (a) and (b) being in the nature of review on the ground that new materials have come to the notice or any entry in the Record does not bear any relationship to the existing rights, no exception can be taken to these provisions. It is also conceded that if any entry is incomplete with regard to any right, any step taken to complete it is in the nature of a supplementary provision and does not affect the finality attached to the Record-of-Rights. What however is objected to is against the correction of the entry on the ground that it is incorrect which means that what the Special Officer had previously recorded is not correct. As power had been given u/s 6 of the 1952 Act to get such wrong entries corrected by preferring objections and subject to the orders passed on such objections the Record was deemed to be final, the present provision in Section 15-B that the Record which had attained finality can now be corrected on the ground that any entry made therein is incorrect, would be inconsistent with the provisions of Section 6 of the 1952 Act which has been made a part of the present Act. The words "or incorrect" in Clause (c) of Sub-section (1) of Section 15-B must therefore be struck down.

12. So far as Section 8-A is concerned, it does not in any way affect the finality of the Record-of-Rights, because Section 8-A comes into operation only when the Raja of Puri claims any right in addition to those recorded in the Record-of-Rights. In other words, it is a provision designed to complete what otherwise is incomplete and like the first part of Clause (c) of Section 15-B (1), it is in the nature of a supplementary provision. It, therefore, follows that Section 8-A does not suffer from any infirmity,

13. The last of the impugned provisions is Clause (b) of Sub-section (5) of Section 30-A brought about by Section 14 of the Amending Act. To the Record-of-Rights framed and finally published under the provisions of the 1952 Act is attached a sketch map of the temple compound which has been divided into several plots. Plot No. 156 therein has been described as Ananda Bazar. The entry under Plot No. 156 occurring at page 257 of the Record-of-Rights, Form B, runs thus:

\* \* \* \* \* [original omitted]

The entry in effect means that in the space (between the Mandap and the Government Pasara) the Suaras and Mahasuaras sell Mahaprasad without paying any rent therefor. But such of the persons as purchase Prasad from the Suaras and expose it for sale in Ananda Bazar are liable to pay daily fees therefor.

Previously Tunia Mahaprasad was being leased out here. On the left side near the Bhittar Duara the Suaras and Mahasuaras sell Mahaprasad and on the southern side, the Panda Niyoga and Poshupalak Niyoga sell Mahaprasad. In between these two, there is a Sarkari land. It is contended that when under the Record-of-Rights, the Suaras and the Mahasuaras have got the right to sell Mahaprasad in Ananda Bazar which must be interpreted to mean that they are entitled to sell Mahaprasad at any place they like in Ananda Bazar, the restriction now sought to be imposed by requiring them to sell Mahaprasad at the place allotted to them by the Committee affects the rights of the Suaras and Mahasuaras guaranteed to them under Article 19(1)(f) of the Constitution. It is submitted on behalf of the State that the impugned provision under Clause (b) of Sub-section (5) of Section 30-A is only a regulatory measure and does not in any way affect the rights which the petitioners may have to sell Mahaprasad in Ananda Bazar. In view of the fact that thousands of pilgrims purchase Mahaprasad every day for their consumption, it is absolutely necessary that Mahaprasad should be sold in hygienic conditions. It is, therefore, open to the management to regulate the sale of Mahaprasad with a view to achieve such conditions. It is a matter of common knowledge that previously Mahaprasad was being sold at old places in Ananda Bazar through which thousands of pilgrims pass every day with the result that very often and specially during the rainy season, Mahaprasad was being exposed for sale in thoroughly unhygienic conditions. What is submitted on behalf of the State is that specified places in Ananda Bazar which do not lie on the way through which pilgrims pass to and from the temple have now been set apart for the sale of Mahaprasad, that raised platforms have been constructed for that purpose and that a part of the area set apart for sale of Mahaprasad has also been covered with a roof at great expense. All this has been done in the interest of the pilgrims who daily purchase Mahaprasad for consumption and also in the interest of those who expose the Mahaprasad for sale because due protection has been afforded to them from sun and rain. It is submitted on behalf of the State that for sale of Mahaprasad in the area allotted for the purpose, no fee is charged, and that the expression "allotted" occurring in the impugned provision does not mean allotted to any individual but allotted for the purpose of sale of Mahaprasad, We fail to see how this provision in any way adversely affects the rights of any class of Sevaks to sell Mahaprasad in the Ananda Bazar. We are satisfied that the impugned provision is really a regulatory measure designed in the interest of the thousands of pilgrims who daily purchase Mahaprasad, and, if at all it restricts the rights of the Sevaks, it is a reasonable restriction being within the purview of Clause (6) of Article 19 of the Constitution and is valid.

14. In the result, out of the five impugned provisions, we find no infirmity in the definition of "sevak" occurring in Clause (d-1) of Section 4 (1), in Section 8-A and in Clause (b) of Sub-section (5) of Section 30-A. For reasons already stated, we strike down the definition of the word "Niyoga" in Clause (a-1), in Section 4 (1) and the words "or incorrect" occurring in Clause (c) of Sub-section (1) of

Section 15-B of the Principal Act (as it now stands after amendment). The writ application succeeds to the extent indicated above. There shall be no order as to costs.

Panda, J.

15. I agree.