

(2020) 06 OHC CK 0003

In the Orissa High Court

Case No : Writ Petition (Civil) No. 12494 Of 2020

Surendra Panigrahi

APPELLANT

Vs

State Of Odisha & Others

RESPONDENT

Date of Decision : 09-06-2020

Acts Referred:

Disaster Management Act, 2005 — Section 3, 6, 6(2)(i), 10(2)(l), 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60
Indian Penal Code, 1860 — Section 188

Citation : (2020) 06 OHC CK 0003

Hon'ble Judges : Mohammad Rafiq, CJ; Biswajit Mohanty, J

Bench : Division Bench

Advocate : S.K. Padhi, N.C. Rout, Sk. Kalimuddin, A. K. Mohapatra, B. Panda, S. Sarangi, A. Pati, J.S. Samal, B. K. Ragada, L.N. Patel, H.K. Muduli, M.Sahoo, S. Das, B. Mohanty, C.K. Agarwal, A. Patnaik, Chandrakanta Pradhan, S. Satpathy, Ashok Kumar Parija

Final Decision : Disposed Of

Judgement

Mohammad Rafiq, CJ

1. These two writ petitions have been filed in the nature of Public Interest Litigation, raising the issue about the Car Festival of Lord Shree Jagannath

at Puri, which is scheduled to take place on 23.06.2020. One of the above writ petitions i.e. W.P.(C) No.13853 of 2020, filed by one Dillip Kumar

Ray, has been taken up on special mention today, along with W.P.(C) No. 12494 of 2020, already on board, after notice to learned counsel for the

State-opposite parties.

2. The prayer in the first writ petition filed by Surendra Panigrahi-petitioner is that the Temple Managing Committee of Lord Shree Jagannath, Puri

and other opposite parties-the State Government and other authorities, may be

directed to postpone the Car Festival at Puri due to pandemic

Coronavirus (COVID-19). Another writ petition has been filed with the prayer that Car Festival/Rath Yatra/Gundicha Yatra should be allowed to be

held by strictly adhering to the conditions imposed in the guidelines issued by the Government of India, Ministry of Home Affairs, New Delhi vide

Order No.40-3/2020-DM-I(A) dated 30.05.2020 (Annexure-B/5 to the Preliminary Counter Affidavit) and the order dated 01.06.2020 passed by the

Government of Orissa, by maintaining social distancing and wearing mask. An additional prayer has been made that the Chariots/Car of Lords may be

allowed to be pulled only by the heavy duty machineries rather than the men power.

3. We have heard learned counsel for petitioners, learned Advocate General and learned Counsel for the interveners.

4. Mr. S.K. Padhi, learned counsel for the petitioner in the first writ petition submitted that more than 10 lakhs people have always attended the Rath

Yatra in the past. If the Car Festival is allowed to take place on 23.06.2020, it might attract lakhs of devotees this time also. The entire country

including the State of Odisha is presently passing through a very critical phase due to the outbreak of pandemic Coronavirus. Such large gathering in

and around Puri might prove super spreader of Coronavirus; jeopardizing lives of thousands of people. Learned counsel submitted that the Government

of India in its guidelines dated 30.05.2020, issued under the Disaster Management Act, 2005 has prohibited all kinds of

social/political/sports/entertainment/academic/cultural/religious functions and other large congregations. It has directed the State Government not to

dilute these guidelines in any manner. All the District Magistrates have been asked to strictly enforce the same. Any person violating these measures

will be liable to be proceeded against as per the provisions of Sections 51 to 60 of the Disaster Management Act, besides legal action under Section

188 of the IPC, and other legal provisions.

5. Mr. Dillip Kumar Ray, the petitioner in person in W.P.(C) No.13853 of 2020, has also expressed similar apprehensions as have been voiced by

learned counsel for the petitioner in the other writ petition. He submitted that if the State authorities are permitted to hold the Rath Yatra, they should

be mandated to strictly adhere to the guidelines issued by the Government of

India and the State Government, for maintaining social distancing and allow only limited number of Sebayat/Daitapati, priests and police personnel to participate, who should be mandated to wear masks. His additional submission is that rather than pulling manually, which might require seven to eight hundred persons, the Chariots/Car should be pulled with the help of heavy duty machineries so that involvement of such large number of persons in pulling the Chariots/ Car can be avoided.

6. Learned Advocate General submits that in view of the total lockdown imposed by the Central Government, the State Government vide its letter dated 06.05.2020 approached the Government of India, seeking permission for construction of Rathas as well as conduct of Rath Yatra. The Ministry

of Home Affairs, Government of India vide its letter dated 07.05.2020 (Annexure-A/5 to the preliminary counter affidavit) addressed to the Chief

Secretary of the State, while permitting construction of the Ratha to be undertaken in the Ratha- Khala, directed that no religious congregations shall

be allowed to take place in the Ratha-khala and complete segregation should be ensured and the guidelines issued by the MHA and the National

Directives for Covid-19 Management should be compulsorily adhered to. Attention of the Court in particular is invited towards para-4 of the aforesaid

letter, wherein it has been stated that decision regarding holding of Ratha Yatra should be taken by the State Government, keeping in view the

conditions prevailing at that point of time. Learned Advocate General submits that sub-clause (iv) of Phase III in Clause 1 of the latest guidelines

dated 30.05.2020 (Annexure-B/5 to the preliminary counter affidavit) issued by the Central Government for Phased Re- opening (Unlock 1),

categorically provides that dates for re-starting certain activities with regard to the social/ political/ sports/ entertainment/ academic/ cultural/ religious

functions and other large congregations shall be decided based on the assessment of the situation. Clause 5 of the said guidelines further provides that

the State Government, based on its assessment of the situation, may prohibit certain activities even outside the Containment zones, or impose such

restrictions as it may deem necessary. Clause 9 of the said guidelines directs that the State/UT Governments shall not dilute these guidelines issued

under the Disaster Management Act in any manner. Learned Advocate General submits that this however does not mean that the State Government

cannot enforce further restrictions on the basis of evaluation of the situation. He further submits that the State Government has also issued an order

dated 01.06.2020 (Annexure-C/5 to the preliminary counter affidavit) containing these and many other guidelines. In sub-clause (v) of Clause 3 of the

said order, it has been provided that Social/political/sports/entertainment/academic /cultural/religious functions and other large congregations will

continue to remain closed till 30.06.2020.

7. Learned Advocate General submits that the first case of Coronavirus in State of Odisha was reported on 16.03.2020. Thereafter, due to the pre-

emptive measures taken by the State Government to tackle the spread of Coronavirus, there was no spurt of positive cases in the State. However

there has been a steep increase in the number of positive cases on account of recent influx of the migrants and people coming from the outside the

State. It is submitted that while on 30.03.2020, there were only 3 positive COVID-19 cases in the State, but the number increased to 143, 2104 and

2856 on 30.04.2020, 31.05.2020 and 07.06.2020 respectively. The situation on ground is thus changing everyday. As per the assessment of the experts

in the medical field, number of positive Coronavirus cases is likely to increase sharply in the months of June and July, before reaching a peak. Learned

Advocate General submits that the number of positive case at Puri on 1st may, 2020 was only one but number of such cases in district Puri has

increased drastically and as on 07.06.2020, it has reached 108. Keeping this in mind, Puri was classified as a high risk zone and therefore included in

the 11 districts earmarked for weekend (Saturday and Sunday) shutdown vide order dated 01.06.2020.

8. Learned Advocate General relied on the decision of this Court dated 04.06.2020 in W.P(C) No.13539 of 2020, wherein the petitioner Jayanta

Kumar Bal approached this Court with a prayer that State Authorities may be directed to allow him and the devotees/senior citizens/sevakas/people of

Puri to have darshan of Lord Shree Jagannath on Shnana Purnima on 05.06.2020 outside the Meghanada Pacheri and further prayed to quash and set

aside the Clause 3 (a) (i) of the order dated 01.06.2020 issued by the Government of Orissa, being contrary to the guidelines issued by the

Government of India dated 30.05.2020. This Court, while considering the guidelines issued by the Central Government dated 30.5.2020 and the order

of the State Government dated 01.06.2020, declined to interfere in the matter by holding that the State Government in having extended the restrictions

upto 30.06.2020 with regard to the entry into the religious places/places of worship, appears to have taken into consideration the larger public interest.

It was held that decision of the State Government was in consonance with the guideline issued by the Central Government, aimed at preventing spread

of Coronavirus. Learned Advocate General submits that the decision whether or not to allow the Rath Yatra shall be taken by the State Government

only few days before the scheduled date i.e. 23.06.2020, on the basis of the situation then prevailing on ground. Learned Advocate General drew the

attention of the Court towards such specific stand of the Government in para 18 of its counter affidavit.

9. We have given our thoughtful consideration to rival submissions and examined the material on record.

10. Corona Virus disease, which has now come to be known as COVID-19, is caused by Novel Corona Virus. This was first detected in Wuhan city

of Hubei province of China sometime in December 2019. This virus rapidly spread across the world in and around 167 countries including India by

mid of March 2020, as a result of which, the World Health Organization declared this as a pandemic. The Government of India comprehending the

gravity of the problem invoked the Disaster Management Act 2005 (for short, the Act), for management of the disaster, where in the "disaster"

has been defined in 2(d), where "disaster management" has been defined in 2(e) of the Act to mean "a continuous and integrated process of

planning, organising, coordinating and implementing measures which are necessary or expedient for" (i) prevention of danger or threat of any

disaster; (ii) mitigation or reduction of risk of any disaster or its severity or consequences; (iii) capacity-building; (iv) preparedness to deal with any

disaster; (v) prompt response to any threatening disaster situation or disaster; (vi) assessing the severity or magnitude of effects of any disaster; (vii)

evacuation, rescue and relief; (viii) rehabilitation and reconstruction."

11. Section 3 of the Act envisages establishment of National Disaster Management Authority, headed by Prime Minister of the Country, as its ex

officio Chairperson. Similarly, Section 14 of the Act provides for establishment of the State Disaster Management Authority with the Chief Minister of

the State, as its ex officio Chairperson. The power and functions of National Authority has been enumerated under Section 6 of the Act, which

includes the power for laying down the policies, plans and guidelines for disaster management; approving the National Plan; laying down guidelines to

be followed by the different Ministries or Departments of the Government of India for the purpose of integrating the measures for prevention of

disaster or the mitigation of its effects in their development plans and projects; and take such other measures for the prevention of disaster, or the

mitigation, or preparedness and capacity building for dealing with the threatening disaster situation etc. Section

18 of the Act enumerates the powers and functions of the State Authority, which includes the power to lay down the State Disaster Management

Policy; approve the State Plan in accordance with the guidelines laid down by the National Authority; approve the disaster management plans

prepared by the departments of the Government of the State; lay down guidelines to be followed by the departments of the Government of the State

for the purposes of integration of measures for prevention of disasters and mitigation in their development plans and projects and provide necessary

technical assistance therefor; and review the measures being taken for mitigation, capacity building and preparedness by the departments of the

Government of the State and issue such guidelines as may be necessary.

12. While the National Plan has been separately defined in Section 11 of the Act, Section 23 stipulates the State Disaster Management Plan for the

State, which may include the vulnerability of different parts of the State to different forms of disasters; the measures to be adopted for prevention and

mitigation of disasters; the manner in which the mitigation measures shall be integrated with the development plans and projects; the capacity-building

and preparedness measures to be taken; the roles and responsibilities of different Departments of the Government of the State in responding to any

threatening disaster situation or disaster.

13. The National Disaster Management Authority while invoking the power under Section 6(2)(i) of the Act issued an order dated 24.03.2020,

directing the Ministries/Departments of Government of India, and the State/ Union Territory Governments and State/Union Territory Authorities to

take effective measures to prevent the spread of COVID-19 in the country. As a

consequence, the Ministry of Home Affairs, (MHA) issued an order dated 24.03.2020 under Section 10(2)(I) of the Act, imposing lockdown and directing all concerned to take effective measures for ensuring social distancing so as to prevent the spread of COVID-19 in the country. This order remained in force in all parts of the country for a period of 21 days with effect from 25.03.2020. National Lockdown was then extended further by order of the MHA dated 14.04.2020 upto 30.04.2020 and thereafter, by order dated 01.05.2020, it was extended upto 17.05.2020. A fresh order was then issued by the MHA on 17.05.2020 extending the lockdown measures so as to contain the spread of COVID-19 in the country for a period upto 31.05.2020. It is in continuation thereof that the MHA has now issued fresh directives extending the lockdown in the containment zones by order dated 30.05.2020, however named as Unlock-1, with certain prohibited activities being allowed to be reopened in phased manner in areas outside the containment zones.

14. The State Government of Odisha vide notification date 13th March, 2020 invoked the Epidemic Diseases Act, 1897 and the Code of Criminal Procedure to declare Coronavirus (COVID-19) a disaster. It also imposed restrictions on all kind of congregations so as to ensure â??social distancingâ? for containing the spread of COVID-19. In fact, the Government of Odisha vide notification dated 8th April, 2020 issued Ordinance No.1 of 2020 for incorporating state amendments in the Epidemic Diseases Act, 1897 to make contravention or disobedience of any order or regulation made thereunder an offence punishable with imprisonment for a term which may extend to two years or with fine which may extend up to ten thousand rupees or with both.

15. Perusal of the letter of the Central Government dated 07.05.2020 addressed to the Chief Secretary of the Government of Odisha, indicates that permission for construction of the Ratha in the Ratha-Khala was granted by imposing certain conditions but leaving the decision about holding of the Rath Yatra entirely to the discretion of the State Government, which would be evident from the following excerpts thereof:

â??3. The undersigned is directed to convey that the activity of Ratha construction is allowed to be undertaken in the Ratha-khala, which is situated on both sides of the Grand Road in front of the Temple Office and Sri

Nahar (Palace), subject to the following conditions being fulfilled:

- a) No religious congregation takes place in the Ratha- khala. Complete segregation of Ratha-khala should be ensured.
- b) The new guidelines on lockdown measures issued by MHA on 1st May, 2020, including the National Directives for Covid-19

Management, should be compulsorily adhered to.

4. However, the decisions regarding holding of Ratha Yatra be taken by the State Government keeping in view the conditions prevailing at

that point of time.â??

16. Sub-clause (iv) of Phase III of the latest guidelines dated 30.05.2020 issued by the Central Government categorically provides that decisions to re-

start the activities in the nature of social/political/sports/entertainment/academic/cultural/religious functions and other large congregations shall be

taken based on the assessment of the situation. Additionally, the Central Government in Clause-5 of the said guidelines provides that â??State/UTs,

based on their assessment of the situation, may prohibit certain activities outside the Containment zones, or impose such restrictions as deemed

necessaryâ?. In Clause-9 of the aforesaid guidelines, the State/UT Governments have been mandated not to dilute any of these guidelines, which have

been issued under the Disaster Management Act and all the District Magistrates have been required to strictly enforce these measures. Clause 10 has

made violation of any of these measures punishable as per the provisions of Sections 51 to 60 of the Disaster Management Act besides under Section

188 of the IPC.

17. The State Government, on its part having objectively assessed the situation on ground, has imposed certain additional and further restrictions in its

order dated 01.06.2020, which would be evident from the Clause 3 thereof:-

â??3. Graded re-opening of areas outside the Containment Zones

In areas outside Containment Zones, activities will be regulated as below:

a. The following establishments/activities will continue to remain closed till 30th June, 2020:

(i) Religious places/places of worship for public.

(ii) Shopping malls

- (iii) International air travel of passengers, except as permitted by MHA.
 - (iv) Cinema halls, gymnasiums, swimming pools, entertainment parks, theatres, bars and auditoriums, assembly halls and similar places.
 - (v) Social/political/sports/entertainment/academic/ cultural/religious functions and other large congregations.
- b. Hotels will be allowed to operate up to 30% capacity. Restaurant service will be open only for in-house guests.
- c. Restaurants and Hotels are permitted for home delivery/takeaways of food.
- d. Schools, colleges, other educational/training/ coaching institutions, etc. will remain closed till 31st July, 2020.â??

18. No doubt, the various preventive measures introduced by the Central Government in the guidelines issued under the direction of the National

Disaster Management Authority, in the state of Odisha, have been implemented and enforced. But the power of the State Government in issuing

further and additional guidelines, which do not have the effect of diluting the measures introduced in the guidelines of the Central Government cannot

be denied. The State Government is equally competent to prescribe and enforce such additional and further measures as it may deem necessary on

the recommendation of the State Disaster Management Authorities in the State Plan, as per the provision of Sections 14 to 24 in Chapter III of the

Act.

19. This Court was approached by one Jayanta Kumar Bal in W.P(C) No.13539 of 2020 questioning the competence of the State Government; in

particular about continuing restrictions on entry into places of worship for public even beyond 08.06.2020, upto 30.6.2020 and praying to allow him and

other devotees/senior citizens/sevakas/people of Puri to have darshan of Lord Shree Jagannath on Shnana Purnima on 05.06.2020. Repelling the

contention, this Court upheld the aforesaid guidelines holding thus:-

â??5. Having heard learned Senior Counsel for the petitioner and learned Advocate General for the State- opposite parties and taking

note of the rival submissions, so far as first part of the prayer is concerned keeping the second part open, and considering the guideline

issued by the Central Government and the order dated 01.06.2020 passed by the State Government, we are not inclined to hold that the

impugned order is in any way opposed to public interest. On the contrary, in our

view, the order of the State Government appears to have been passed taking consideration of larger public interest and in consonance with the guideline issued by the Central Government in order to prevent spreading of Coronavirus. This Court would be loath to interfere with the decision of the State Government, which appears to be based on objective evaluation of situation, as in the opinion of this Court, such matters are best left to the discretion of the executive.â??

20. What emerges from the submissions made by learned Advocate General appearing for the State, especially in view of the stand taken by the State

Government in Para 18 of the counter affidavit is that State Government is yet to take a decision on the question of holding of Rath Yatra. Para-18

supra is for the facility of reference reproduced hereunder:-

â??18. That in view of the aforesaid and keeping in mind the deteriorating situation pertaining to the spread of COVID-19 virus in the State of

Odisha, the State Government is constantly monitoring the situation and any decision with regard to the holding of the Ratha Yatra festival will be

taken on the basis of the objective situation of the pandemic as on the relevant date and keeping in mind the interest of the public at large.â??

In view of the above, it is evident that the State Government is fully cognizant of the deteriorating situation about the spread of Coronavirus in the

State. It is constantly monitoring such situation and will take a decision with regard to holding or otherwise, of the Ratha Yatra, on the basis of

objective evaluation of the ground situation at an appropriate time, prior to the scheduled date i.e. few days before 23.6.2020, keeping in view safety,

security and welfare of the State.

21. While therefore not issuing any mandamus as prayed for, this Court is inclined to hold that it is up to the State Government to decide whether or

not to allow the Rath Yatra on 23.6.2020, depending on the situation then prevalent on the ground about the spread of Coronavirus. If however any

such decision is eventually taken, the State Government shall ensure strict adherence to the directives issued by the Government of India in Clause 3

of their letter dated 07.05.2020; with regard to the adherence to the lockdown measures issued by the Ministry of Home Affairs, Government of India

in their Guidelines dated 30.5.2020 and also the National Directives for Covid-19 Management. The State Government shall also ensure strict

adherence to its own order dated 01.6.2020 containing additional and further guidelines. As regards the other prayer that the Chariots/Car should be allowed to be pulled manually or mechanically, we are inclined to observe that deploying heavy duty machineries or any other means like elephants, than the men power, for pulling the Chariots/Rath, would obviously obviate the necessity of involving large number of persons, which number could be in many hundreds. It is therefore directed that this aspect should be duly considered by the State Government while taking a decision for holding Rath Yatra, consistent with the guidelines issued by the Central Government and the State Government.

22. With the above observations, both the writ petitions are disposed of.

As Lock-down period is continuing for COVID-19, learned counsel for the petitioner may utilize the soft copy of this judgment available in the High Court's official website or print out thereof at par with certified copies in the manner prescribed, vide Court's Notice No.4587 dated 25.03.2020.