AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 26356 of 2025
CNR No.ODHC010665462025

Sarat Kumar Gajendra .... ***Petitioner***

-versus-

Collector & District Magistrate, Khordha and others .... ***Opposite Parties***

Advocates appeared in this case:

For Petitioner : In Person
Mr. Laxman Pradhan, Advocate

For Opposite Parties-State : Mr. Debashis Tripathy, Additional Government Advocate

For Intervener : Mr. P.K. Ray, Senior Advocate

CORAM:
HON'BLE THE CHIEF JUSTICE
AND
HON'BLE MR JUSTICE MRUGANKA SEKHAR SAHOO

J U D G M E N T

Date of Hearing and Judgment: 16th October, 2026

HARISH TANDON, CJ.

1. The public order, the morality and health have to be embraced and understood in the perspective of the constitutional aspirations under Article 25 of the Constitution of India. The framer

of the Constitution debated extensively in the Constituent Assembly and after threadbare discussions and discourse under each and every Article, celebrated in the Constitution given by the people of the country adopted on 26th January, 1950 becomes a living evolving document encompassing Fundamental Rights, the Directive Principles and reciprocal obligation of the Government vis-à-vis its citizens.

2. The word "Republic" appearing in the Preamble of the Constitution is a reminder of a federal system to govern the country with the rights having conferred and vested upon the States. The country is not governed with the feudal system giving supremacy and/or primacy to one over the other but embraces the equality principles, not only in every sphere of life but also in professing the religion.

3. The word "Secular" appearing in the Preamble reaffirms the commitment attached to the Constitution that every citizen has a fundamental right to profess the religion and perform such rituals, subject however to certain restrictions which the Government may impose, obviously in relation to maintenance of a public order under Entry-1 of State List in Schedule-VII of the Constitution of India.

4. Though the fundamental rights are inhered and ingrained into every citizen of the country yet, it is not absolved from reasonable restrictions to be imposed by the sovereign under the aegis of the powers to legislate. Even legislation must confirm to the Constitutional ethos and the provisions governing the said field and the Constitutional Courts are not denuded of power to overreach the legislative domain, in the event, such legislation is found to offend any of the provisions of the Constitution or its morality.

5. Often question arises when the fundamental rights guaranteed to each and every individual as a citizen of the country is pitted against the fundamental rights enjoined by a large section of the society. There is no scintilla of doubt in our mind that if the fundamental right of a person is overlapping the fundamental rights of a large section of the society, the law respects the larger interest over an individual interest.

6. The aforesaid proposition of law can be fortified from a judgment of the apex Court rendered in the case of ***Tarak Singh and another v. Jyoti Basu and others***, reported in ***(2005) 1 SCC 201*** wherein, the apex Court, in unequivocal terms, held that in case where the private interest is pitted against the public interest, the

importance and/or primacy must be given to the public interest over such individual interest in the following:

> *"**24.** In the backdrop of the facts and circumstances, as recited above, we are of the view that the conduct of the learned Judge is beyond condonable limits. We are aware that the order, we propose to pass, no doubt is painful, but we have to perform a painful duty to instil public confidence in the judiciary. It is a case where a private interest is pitted against the public interest. It is now a well-settled principle of law that in such cases the latter must prevail over the former. Consequently, the order dated 24-7-1987 passed by the Chief Minister and the formal allotment order dated 16-10-1987 allotting Plot No. FD-429 measuring 4 cottahs in Salt Lake City in favour of Respondent 24 Justice B.P. Banerjee are hereby quashed and cancelled. The plot shall stand vested with the Government."*

7. Article 25 of the Constitution of India contained in Part-III encapsulates within its fold the Right to Freedom of Religion. Clause-1 of the said Article ordains that all persons are equally entitled to freedom of conscience and freely to profess, practice and propagate religion but the said Article starts with the restrictions signifying that such right to profess religion is not an absolute or

inchoate right but subject to the restrictions in relation to a public order, morality and health and to other provisions of the said Part.

8. The expression "subject to the other provisions of the Part" makes it subservient to the other rights guaranteed under the said Part-III, including Article 19 of the Constitution of India, which encompasses the protection of the rights regarding the Freedom of Speech and Expression, assemble peacefully and without arms, forming of an association or union or cooperative society, free movement throughout the territory of India, right to reside and settle in any part of the territory of India and to practice any profession or carrying on any occupation, trade or business.

9. Thus, Article 25 which has its applicability in a restricted manner because of the language having used therein has to be read harmonize and harmonize in juxtaposition with the other provisions of the said Part and the endeavour of the Court would be in this regard to give such interpretation which would render all the provisions of the said Part to work *in tandem* and not to render otiose. The right to profess religion, either individual or in community, is one of the facets of the Fundamental Rights and being embraced since time immemorial.

10. The religious activities, its rituals and its mode of performance through a community is all along being a part of the tradition, the culture and the mode of life which this country enjoins holding of the festivals ordained in a particular religion is always considered amongst the community or a section of the community bringing them together and propagating peace, welfare, harmony and affection amongst the peoples.

11. Our country rejoices the unity amongst the diversity and also recognizes the right to profess religion by each and every section of the people in equal manner and the discriminations in this regard is always eschewed and the Courts often frowned upon the State in the event it is found that the State has discriminated the section of the society on the ground of religion.

12. Performing of Durga Puja and/or Ganesh Puja or any other idol depending upon the region and the community by gathering of a large number of the persons is one of the integral parts of the culture and the tradition and at times, for convenience and are providing an easy access. Those are performed in a temporary manner by putting pandals on the public road.

13. We are conscious that right to free movement not only originates from Article 19 but also a facet of life under Article 21 of the Constitution yet, an individual cannot assert that the same is completely hindered in the event it is found that taking into account the larger public interest, the necessary permission and/or license is granted by the State to organize such festivals across the country. The same does not hinder nor infringe any right provided they have a right of free access but in a restrictive manner.

14. The State is also vested with the power to enact or promulgate statute, putting such restrictions to enjoyment of right guaranteed under Part – III in absence of any illegality and/or unconstitutionality of such statute therefore, an individual cannot assert that he has a larger interest over the public interest. Even if those festivals are performed on a public place, the State must ensure that the movement of public to their respective places of residence is not hindered or completely blocked nor the Court would conceive of that there is no access provided which would have a larger cascading effect in case of emergent situations. Even if the pandals are constructed on a public place, there should be adequate space left for the movement of the vehicles or at least the movement of an ambulance and/or a fire engine in case of any emergency to avoid

any public disorder or a disharmony into a large section of the society.

15. The instant Public Interest Litigation is filed by the petitioner whose house is 50 meter away from the place where the pandal is put temporarily for some days to perform the puja of Lord Ganesh or Goddess Durga, that because of the same, there is a complete blockade of the road making the petitioner inaccessible to his own house.

16. At the time of admission of the instant Public Interest Litigation, we were inculcated a sense and a direction was passed by this Court to effect service upon the State instrumentalities inviting their response to such allegation. The affidavits filed by the State would corroborate that those pandals, where a large section of the society professes religion by offering puja, have never blocked the road in its entirety but there is a 22 feet passage left for commutation of the vehicles ensuring the uninterrupted vehicular movement.

17. Though the petitioner is very much critical on such stand and vociferously refuted the stand of the State, but we feel that once the facts are to be decided on oath-to-oath basis, the Court should always believe the statement which appears to be reasonable and/or

rational. Even apart, it is an ardent duty of the State to see that there is no obstruction in a restrictive movement of the vehicles, at least the persons who reside in the locality will have an access for ingress and egress thereof.

18. Once the State has come with a categorical stand that while granting the permission to perform such religious festivals, it is indicated that it would not block the road in its entirety but there should be sufficient and/or reasonable passage for movement of the vehicles. Since the Public Interest Litigation was entertained by this Court, such factum was spread across the locality and a large number of inhabitants have approached this Court and sought to intervene in the proceedings, including the distant relatives of the petitioner.

19. Though the petitioner has strongly refuted such stand, but we do not intend to delve deep into such aspect treating those persons as the persons living in the said locality and supporting the performance of the community festivals. As we indicated hereinbefore that the larger public interest overshadowed an individual interest, we do not feel that there should be a complete stoppage of the performance of those religious ceremonies or the

puja in the garb that it obstructs the movement of the vehicles and also access to the inhabitants of the said locality.

20. The Government has issued a guideline in tune with the provisions of the statute enacted in this regard ensuring that each and every person should not be deprived of an access to their respective homes nor the vehicle should be completely stopped denying such right to which we do not think that it is a fit case where this Court should pass a writ of *mandamus*.

21. Suffice to say that while granting such license to a community in performing such religious festivals, the Government should ensure that there is no complete disruption in the movement of the vehicles nor the person should be denied a passage for ingress and egress. Adequate distance should be strictly adhered to, which makes the movement of the emergency vehicles, so that in case of any emergency, such facilities and/or amenities are available at their doorstep.

22. The Government shall also maintain the permissible sound limit while organizing those festivals and the deadline which is fixed beyond which it should not be allowed. Since the temporary pandals are put for the religious purposes, a congenial and religious

environment should be maintained as there is hardly any room for any other activities to be performed therein. The Government shall also ensure that the temporary structures put on the public road should be of such measurement which would not eclipse the right of movement, as the reasonable restrictions are permissible and adequate space should be left for vehicular movement.

23. We appreciate the anguish and agony shown by the petitioner flagging such important issues which cannot be brushed aside nor to be nipped in the bud and, therefore, we feel to make such observations.

24. With these observations and directions, the instant writ petition is disposed of.

(Harish Tandon)
Chief Justice

(M.S. Sahoo)
Judge

Sisira/S. Behera