



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) PIL No.15116 of 2024

Rajat Kumar Sahoo **Petitioner**
Mr. P. K. Rath, Senior Advocate with Ms. S. Das, Advocate
-versus-
State of Odisha and others **Opposite Parties**
Smt. Suman Pattanaik, AGA and
Mr. Pradipta Kumar Mohanty, Senior Advocate for O.P. No.3

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MISS JUSTICE SAVITRI RATHO

Order No.

ORDER
03.07.2024

Savitri Ratho, J.

04. This matter is taken up through Hybrid mode.
2. Heard Mr. P. K. Rath, learned Senior Counsel appearing on behalf of the petitioner, Mr. Pradipta Kumar Mohanty, learned Senior Counsel appearing on behalf of opposite party No.3-Puri Municipality and Smt. Suman Pattanaik, learned Additional Government Advocate for State of Odisha.
3. Challenging the Quotation Call Notice No.4222 dated 10.06.2024 (Annexure-1) issued by the Puri Municipality, Puri, the present writ application, under Article 226 of the Constitution of India, has been filed, in the nature of a public interest litigation ('PIL' in short), with the following prayer:



“.....to admit this Writ Petition (PIL), call for the records and after hearing the parties allow the same, issue writ/writs in the nature of certiorari/mandamus and/or any other further writ/direction and set aside/quash the Quotation Call Notice No.4222, dtd. 10.06.2024 issued by Puri Municipality/O.P No.3 and any other proceedings taken place in pursuance of the same and further direct the opposite parties to keep the entire Bada Danda free from all kind of commercial activities.”

4. The petitioner claims to be a public spirited person and a resident of Khakimatha Nuasahi, Station Road, Puri. It is stated in the writ application that the petitioner had earlier approached this Court in W.P.(C) No.10764 of 2018. Before that , W.P.(C) PIL Nos.10620 and 10872 of 2016 had been filed by one Jitendra Kishore Sahoo, a resident of District-Puri and both the W.P.(C) PIL Nos.10620 and 10872 of 2016 were taken up together by this Court and disposed of by a common order dated 30.06.2016 (part of Annexure-5 series), wherein this Court, *inter alia*, had held in paragraphs 12 and 13 as under:

“12. In course of hearing Mr. P.K.Mohanty, learned Senior Counsel appearing along with advocate Mr. A. Das for Puri Municipality, on instruction, undertakes that the municipal authority will not go for construction of any vending zone or grant any



temporary or permanent license in favour of any person to have their shops on “Bada Danda”, which has been declared as National Highway No. 203 from “Sri Jagannath Temple” to “Gundicha Temple” as per Annexure-1 (to W.P.(C) No.10620 of 2016).

13. In view of the aforesaid undertaking, since the municipal authorities are not going to have any vending zone or grant license either permanent or temporary for construction of any shop room on “Bada Danda”, which has been declared as the national highway, this Court is of the considered view that the undertaking so given shall be given effect to.

With the above observations and directions, both the writ applications stand disposed of.”

5. It is submitted by Mr. P. K. Rath, learned Senior Counsel appearing on behalf of the petitioner that ignoring the directions of this Court in the aforementioned common order dated 30.06.2016, the Puri Municipality has come up with the impugned Quotation Call Notice No.4222 dated 10.06.2024 (Annexure-1) calling for sealed quotations from intending persons/agencies for auction of the Mahal “Installation and operation of temporary Stalls from Badasankha to Gundicha Temple (both side of Grand Road)” during Car Festival 2024. He has further submitted that as per the



Quotation Call Notice, quotations have already been opened and the Puri Municipality will permit opening of commercial stalls on both sides of Bada Danda, which will create hindrance to the movement of traffic, the free movement of the chariots of the three deities and inconvenience to the public, who will congregate on the Bada Danda during the Car Festival. He submits that apart from the contents of the impugned quotation notice, his apprehension is also based on the letter dated 16.05.2024, which has been written by the Executive Officer, Puri Municipality, Puri to the Regional Officer, Ministry of Road Transport & Highways (Annexure-3) asking for NOC for installation of stalls during Car Festival 2024 as it is stated in the letter that temporary **commercial stalls** are to be installed for the purpose of revenue generation subject to seeking permission from the Authority of Road Transport & Highway, Bhubaneswar and that the commercial stalls will be of 15ft width at the **extreme edge** of Grand Road from Badasankha to Bus Stand from one side and from Bagha Akhada Matha to Sangram Club on the other side on Grand Road. He submits that in response to letter dated 16.05.2024 (Annexure 3), the Superintending Engineer, N.H. Division, Bhubaneswar has



issued NOC for installation of stalls and has granted permission for installation of temporary stalls on Grand Road from Badasankha to Bus Stand on one side and from Bagha Akhada Matha to Sangram Club on the other side subject to various terms and conditions , but the opposite party No.3 may not adhere to the terms and conditions. The terms and conditions mentioned in letter dated 09.06.2024 (Annexure 4) is extracted below :

*“I. **No commercial stalls to be erected** within the ROW of National Highways (Badadanda) in respect to rules under the Land & Traffic Act-2002.*

*II. The suitable action may be taken for installation of temporary stalls after due consultation with local Administration including stake holders and **ensure safety of road users, smooth flow of traffic on the road and there shall not be any traffic chaos during the Car Festival** period.*

III. Further it is to be ensured that the damages to NH if any occurred during the erection of temporary structure shall be repaired to original condition and the cost thereof shall be borne by the requisite body.”

(Emphasis supplied)



6. A counter affidavit has been filed by opposite party No.3-Puri Municipality denying the allegations in the writ petition and alleging that the petitioner is doing business of restaurant at Bada Sankha encroaching upon the Grand Road and he has been cautioned time and again by the field staff of tPuri Municipality that he should not encroach upon the Grand Road/Bada Danda; and that is the reason he has filed this writ application and had also made similar allegations earlier . It is specifically averred in the counter affidavit that the proposed stalls will not encroach on the Bada Danda and will not be used for commercial activity . The relevant portion of the paragraphs 6 and 8 of the counter affidavit are extracted below:-

*“6.....All the stalls pursuant to the Quotation Call Notice vide Annexure-1 will be installed and provided by Puri Municipality through such successful auction holders for operation and displaying of activities of the Government authorities and also by the Municipal authorities, mainly for public utilities and **not for any commercial activities**...”*

“8. That, it is relevant to submit for appreciation of the Hon’ble Court that, notwithstanding the Bada Danda/Grand Road being declared as the National High Way by the NHAI to the extent of 41 Mrts. of the width



*from Lions Gate to Gundicha Temple, after this being road within Puri Municipality, it is the bounden duty and responsibility of the local body, the Puri municipality for clearing it regularly, making lighting arrangement, supplying of water etc. for general public during the Car Festival (Ratha Yatra). In order to augment some revenue to meet such expenditure, such stalls are provided by Puri Municipality for different activities to meet the public utilities and for the same the permission has been granted by the NHAI, **even though, such stalls are to be installed both sides of the Grand Road i.e. National Highway, from Bada Sankha to Gundicha Temple without encroaching upon the same.***

(Emphasis supplied)

7. Sections 24 and 38 of the Control of National Highways (Land and Traffic) Act, 2002 which are relevant for consideration of this writ application are extracted below: -

“24. Prevention of occupation of highway land—(1) No person shall occupy any highway land or discharge any material through drain on such land without obtaining prior permission, for such purpose in writing, of the Highway Administration or any officer authorised by such Administration in this behalf.



(2) The Highway Administration or the officer authorised under sub-section (1) may, on an application made by a person in this behalf and having regard to the safety and convenience of traffic, grant permission to such person—

(i) to place a movable structure on the Highway in front of any building owned by him or to make a movable structure on support of such building and over the Highway, or

(ii) to put up a temporary lawning or tent or other similar construction or a temporary stall or scaffolding on the Highway, or

(iii) to deposit or cause to be deposited, building materials, goods, for sale or other articles on any Highway, or

(iv) to make a temporary excavation for carrying out any repairs or improvements to adjoining buildings,

and such permission shall be granted subject to the conditions and on payment of the rent and other charges by issuing permit in the form as may be prescribed:

Provided that no such permission shall be valid beyond a period of one month at a time from the date on which the permission has been granted unless it is renewed by the Highway Administration or such officer



on an application made by such person for the renewal of the permission.

(3) The permission granted under sub-section (2) shall specify therein—

(i) the time up to which the permission is granted;

(ii) the purpose of such permission;

(iii) the portion of the Highway in respect of which the permission has been granted,

and shall be accompanied with a plan or sketch of such portion of Highway.

(4) The person, to whom the permit has been issued under sub-section (2), shall produce the permit for inspection whenever called upon to do so by any officer of the Highway Administration and shall, on the expiry of the permission granted under such permit, restore the portion of the Highway specified in the permit in such condition as it was immediately before the issuing of such permit and deliver the possession of such portion to the Highway Administration.

(5) The Highway Administration or the officer issuing the permit under sub-section (2) shall maintain a complete record of all such permits issued, and shall also ensure in every case at the expiration of the period up to which the permission under a permit is granted under that sub-section that the possession of the portion



of the Highway in respect of which such permission was granted has been delivered to the Highway Administration.

xxx

xxx

xxx

38. Construction on highway land.—(1)

Notwithstanding anything contained in any other law for the time being in force, no person other than a Highway Administration or a person authorised by such Administration in this behalf shall construct, install, shift, repair, alter or carry any poles, pillars, advertisement towers, transformers, cable wire, pipe, drain, sewer, canal, railway line, tramway, telephone boxes, repeater station, street, path or passage of any kind on highway land or across, under or over any Highway except with the prior permission in writing of the Highway Administration for such purpose.

(2) Any person who intends to obtain the permission under sub-section (1) shall make an application in the prescribed form to the Highway Administration containing therein the purpose and period of occupancy of Highway, location and part of the Highway to be occupied, method of execution of work, period of construction and method of restoration of such part of the Highway.

(3) The Highway Administration shall consider the application made under sub-section (1) and if it is



satisfied that there is no alternative other than the Highway in respect of which the permission is sought under the application where the land can be found to locate the public utility, it may give permission in writing as sought in the application:

Provided that while giving such permission, the Highway Administration may impose such conditions as it may deem fit to protect—

(i) the Highway from damage; and

(ii) the traffic on the Highway from obstruction,

and may also impose such fees and other charges as may be prescribed on the person to whom such permission is given in respect of any land forming part of the Highway, occupied or applied to the proposed work or construction under permission and also impose on such person the expenditure, if any, incurred by the Highway Administration for repairing any damage caused to the Highway by laying or shifting of any structure, article or equipment under the permission.

(4) If any person, in contravention of subsection (1), makes any construction or carries out any other work, the Highway Administration may, at its own expenses, cause such construction or other work to be removed from the Highway and restore the Highway in the condition as it was immediately before giving permission for such construction or other work under



sub-section (3) and such expenses together with fifteen per cent. thereof as additional charges and fine imposed by the Highway Administration taking into account the nature of the damages caused by such construction or other work, which shall not be less than five hundred rupees per square metre of land used for such construction or other work, but shall not exceed the cost of such land, shall be recovered from such person in accordance with the provisions contained in section 27 as if such expenses, additional charges and fine were the expenses, additional charges and fine recoverable under that section.

(Emphasis supplied)

8. It is apparent from the said provisions that permission can be accorded by NHAI for construction subject to restriction imposed by them and that on 04.06.2024 vide Annexure-4 , permission has been granted to opposite Party No. 3 , subject to different terms and conditions which have been extracted in paragraph 5 of this order .

9. It is not disputed that the Bada Danda has been declared as National Highway No.203 and it has been handed over to the Executive Engineer, National Highway Division on



17.04.2022, The width of the Bada Danda varies from 39 to 43 Mtrs and its length is about 2.51 km. and the three chariots of the deities will move on this stretch during the “Car festival” .

10. In view of the nature of relief claimed by the petitioner which we feel is in public interest , we are not going into the allegation of the Puri Municipality regarding the oblique interest of the petitioner in filing this PIL. But the Puri Municipality is at liberty to remove any encroachment, which is existing on the Bada Danda, for smooth movement of the chariots and the traffic.

11. In view of the decision of this Court in **W.P.(C) PIL Nos.10620 and 10872 of 2016** (*Jitendra Kishore Sahoo v. State of Odisha and others*) decided on 30.06.2016, the conditions imposed in the permission granted by the NHAI on 04.06.2024 (Annexure-4) and the undertaking of the Puri Municipality That all the stalls will be used “ *for operation and displaying of activities of the Government authorities and also by the Municipal authorities, mainly for public utilities and not for any commercial activities...* ”

and

“*even though, such stalls are to be installed both sides of the Grand Road i.e. National Highway, from Bada Sankha to Gundicha Temple without encroaching upon the same.*” ,



we do not consider it necessary to interfere with the impugned Quotation Call Notice (Annexure 1) .

12. We dispose of the writ application with the direction that the temporary shops to be erected on behalf of the Puri Municipality will not encroach upon the Bada Danda in any manner and will not be utilized for any commercial activity and the Puri Municipality will strictly abide with the terms and conditions contained in letter dated 04.06.2024 (Annexure 4) .

13. With the above observations and directions, the writ application is disposed of.

(Chakradhari Sharan Singh)

Chief Justice

(Savitri Ratho)

Judge

M. Panda