

ORISSA HIGH COURT: CUTTACK

W.P.(C). Nos. 10620 and 10872 of 2016

In the matter of applications under Articles 226 and 227 of the Constitution of India.

Jitendra Kishore Sahoo (in both) Petitioner

-versus-

State of Odisha and others (in both)..... Opp. Parties

For Petitioner : M/s. P.K.Rath,
R.N.Parija,A.K.Rout,S.K.Singh,
S.K.Pattnaik,A.Behera,
P.K.Sahoo,P.K.Samantray, Advocates

For Opp.Parties : Mr. S.P. Mishra,
Advocate General with
Mr. P.K. Muduli,
Addl. Standing Counsel for the State.

Mr. P.K. Mohanty, Sr. Counsel
(For Puri Municipality) with
Mr. Abhijit Das, Advocate

Amitabh Das, Advocate
(For NHAI)

Dr. A.K. Mohapatra, Sr. Counsel
with Mr. S.P. Mangaraj and
Mr.S. Mohapatra, Advocates
(For Intervenors)

P R E S E N T :

**THE HON'BLE THE CHIEF JUSTICE MR. VINEET SARAN
AND
THE HONOURABLE DR. JUSTICE B.R.SARANGI**

Decided on 30.06.2016

Dr. B.R.Sarangi, J. Jitendra Kumar Sahoo claiming to be a public spirited person has filed both the writ petitions in the nature public interest litigation. He filed W.P.(C) No. 10620 of 2016 to quash the notice dated 13.05.2016 under Annexure-3 issued by the Executive Engineer, Puri Municipality inviting applications for rehabilitation of the businessmen by establishing vending zone by the side of the "Bada Danda" at Puri. In W.P.(C) No. 10872 of 2016 he seeks to quash the tender process pursuant to notice dated 21.06.2016 under Annexure-1 issued by Executive Officer, Puri Municipality by which applications have been invited for allotment of cabins over the National Highway, "Bada Danda" from "Saradhabali", i.e., "Bada Sankha" up to "Gundicha Temple" and further seeks for a direction to the opposite parties to keep the entire "Bada Danda" clean, free from all kind of commercial activities.

Both the writ petitions, having been filed by the same petitioner for similar cause of action, are heard together and disposed of by a common judgment with the consent of the parties.

2. Heard Mr. P.K. Rath, learned counsel for the petitioner, Mr. S.P. Mishra, learned Advocate General appearing for the opposite party-State, Mr. P.K. Mohanty, learned Sr. Counsel along with advocate Mr. A. Das, appearing for the Puri

Municipality, Mr. Amitabh Das, learned counsel for the National Highways Authority of India (NHAI) and Dr. A.K. Mohapatra, learned Sr. Counsel along with advocate Mr. S.P. Mangaraj as well as Mr. S.S. Mohapatra, learned counsel for the intervenors.

3. W.P.(C) No.10620 of 2016 was listed on 29.06.2016 and considering the gravity of the case due to ensuing car festival, which is scheduled to be held on 06.07.2016, instructions were sought for from the learned Advocate General and notices were issued to the counsel appearing for the Puri Municipality and National Highways Authority calling upon them to obtain necessary instructions, and the matters were directed to be listed today, i.e., 30.06.2016. All the counsel having entered appearance, with their consent the writ petitions are being disposed of at the stage of admission, without calling for any counter affidavit.

4. Mr. P.K. Rath, learned counsel for the petitioner strenuously urged that "Bada Danda" at Puri has its cultural heritage for the purpose of car festival of "Lord Jagannath". In the "Bada Danda", the chariots of "Lord Balabhadra", "Maa Subhadra" and "Lord Jagannath" are pulled by lakhs of devotees. "Bada Danda" has been declared as National Highway No.203 by the National Highways Authority having its specifications. But, Executive Officer, Puri Municipality having no authority of law has issued tender notice to have the vending zone and for grant of temporary license for carrying on business on the said road.

Thereby, they are violating the provisions contained in the National Highways Act, 1956 and Rules framed thereunder.

5. Mr. S.P. Mishra, learned Advocate General states that the "Bada Danda" is to be used as a road, no shops can be established on the said road. In any case, since the municipal authorities have issued notice inviting applications for establishment of vending zone as well as for grant of temporary license for shops, it is the municipal authorities, who have to explain under what circumstances such notifications have been issued.

6. Mr. P.K. Mohanty, learned Sr. Counsel appearing along with Mr. A. Das, learned counsel for the Puri Municipality states that neither vending zone nor shops will be established on the National Highway declared by the National Highways Authority. It is submitted that the notification has been issued inviting applications for establishment of vending zone and grant of licence for opening of shops on the area, which is beyond the National Highway. Therefore, he candidly states and undertakes that no license would be granted and no vending zone would be established on the area earmarked by the National Highways Authority to be used as "Bada Danda" for the purpose of car festival.

7. Considering the above contentions raised by the counsel for the parties and after going through the records, it appears that

the National Highways Authority has declared the "Bada Danda" as National Highway No.203 and as such vide letter dated 22.07.2002 (Annexure-2 to W.P.(C) No. 10872 of 2016) the Engineer in chief-cum-Secretary to Government communicated to the Chief Engineer D.P.I. & Roads, Odisha, Bhubaneswar requesting the Executive Engineer, Puri R & B Division to transfer the said road to the Executive Engineer, National Highways, Bhubaneswar. Consequent thereto, charges of handing over and taking over of road, namely "Bada Danda" Puri from Puri R & B Division No.1 to Executive Engineer, N.H. Division, Bhubaneswar has been done on 17.04.2002. Pursuant to the said handing over and taking over of road, the "Bada Danda" at Puri has become National Highway and is within the control of Executive Engineer, National Highways Division, Bhubaneswar. The "Bada Danda" continues from "Singhadwara" of "Lord Jagannath Temple" to "Gundicha Temple" from R.D. 0.00 Km. to 2.5 Km. As per the index map, "Bada Danda" (from "Lord Jagannath Temple" to "Gundicha Temple") specified with the area, having width varying from 39 metres to 41 metres, has been handed over to National Highway Authorities.

8. As it appears from the index map under Annexure-1 (to W.P.(C) No. 10620 of 2016), at "Lord Jagannath Temple", the width of the road is 39 metres, whereas at "Badasankha" it is 41 metres and that continues upto "Gundicha Temple". There is no dispute with regard to handing over and taking over of road by Executive

Engineer, R & B Division No. 1 to Executive Engineer, N.H. Division, Bhubaneswar.

9. Section 38 of Chapter VI of "The Control of National Highways (Land and Traffic) Act 2002", which deals with "Construction on highway land" clearly specifies that no person can construct, install, shift, repair, alter or carry any poles, pillars, advertisement towers, transformers, etc. on the highway land or across, under or over any Highway without prior written permission of the Highway administration.

10. In **Bharat Singh v. Managment of New Delhi Tuberculosis Centre, New Delhi**, AIR 1986 SC 842 the apex Court held that it is rule of construction of statute that in the first instance the grammatical sense of the words is to be adhered to. The words of a statute must prima facie be given their ordinary meaning. In **Dayal Singh v. Union of India**, (2003) 2 SCC 593, the apex Court held where the grammatical construction is clear and manifest and without doubt, that construction ought to prevail unless there be some strong and obvious reason to the contrary. Similar view has also been taken in **PUCL v. Union of India**, (2005) 5 SCC 363.

Therefore, it is an elementary principle of the construction of statute that the words have to be read in their literal sense. Thus, generally speaking, words and expressions would be given their plain and ordinary meaning which cannot be cut down or curtailed unless they in themselves are clearly restrictive. If the words of the statute are clear and unambiguous, it is the plainest duty of the Court to give

effect to the natural meaning of the words used in provisions. The courts are enjoined to take the words as used by the legislature and to give them the meaning which naturally implies. To ascertain the literal meaning, it is equally necessary, first to ascertain the juxtaposition in which the rule is placed, secondly, the purpose for which it is enacted, thirdly, the object which it is required to subserve, and fourthly, the authority by which the rule is framed.

11. Applying the aforesaid statutory interpretation to the present context, it appears that prior written permission from the Highway Administration is required to use the high way for purpose other than for which it has been constructed. Nothing has been placed on record to indicate, nor any submission has been made by any of the counsel, that any permission has been obtained by the Puri Municipality from Highway Administration for installation of any vending zone or shop on the National Highway earmarked as per the maps as at Annexure-1. In such view of the matter, the Municipality cannot issue any notice for construction of such vending zone or grant temporary license to shops to be established on the earmarked area of the National Highway as per the map enclosed.

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.

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Vineet Saran, C.J.

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Dr.B.R.Sarangi, J.

Orissa High Court, Cuttack
The 30th June, 2016/GDS/Ashok