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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.28467 of 2021

Balubazar Puja Committee and others ***Petitioners***

Mr. Pitambar Acharya, Senior Advocate
-versus-

State of Odisha and another ***Opposite Parties***
Mr. Debakanta Mohanty, A.G.A. for the State

CORAM:
THE CHIEF JUSTICE
JUSTICE B.P. ROUTRAY

ORDER
17.09.2021

Order No.

02. 1. The Balubazar Puja Committee and three of its office bearers have filed the present petition aggrieved by Clause-4 of the Order No.4534/R&DM (DM) dated 9th August 2021 ('impugned Order') issued by the Special Relief Commissioner and Additional Chief Secretary to Government of Odisha (Disaster Management) mandating that, in light of the threat to health and safety of the people as a result of the Covid-19 pandemic, the Puja Committees/organizers in urban and rural areas while conducting Puja in Mandaps/Pandals will adhere to the instruction that "the size of idol shall be less than 4 feet."
2. The Petitioners have also filed an additional affidavit quoting a purported statement of a Government official that

increasing the height of the idol would not pose any threat of spread of COVID-19.

3. Mr. Pitambar Acharya, learned Senior Advocate appearing for the Petitioners has strenuously pleaded for waiver of the above condition specific to the Puja celebrations being organized by the Petitioners. According to him, the deity of Maa Durga has been worshiped since 1509 without interruption and disruption. He maintains that in Cuttack city in particular, the Durga Puja festival has a special significance. According to him, the clay statue of goddess Maa Durga of the Balubazar Puja Committee known as Mrunmaya Murti has been constructed since 1514 with a height of 7.5 feet to 8 feet. The festival of Maa Durga has been known as Sarbajanin Durga Puja from the year 1882 onwards. According to Mr. Acharya, the situation that prevailed as a result of the Covid-19 pandemic in the months of September and October in 2020 was dire, whereas at present there is no lockdown. According to him therefore there is no justification in the State Government insisting that the height of the idol should not exceed 4 feet as that had no nexus to the danger posed by the pandemic. This according to Mr. Acharya, has hurt the religious sentiments of the people of Cuttack. He submits that the State government should not be 'adamant' in insisting on enforcement of the above restriction on the height of the idol. He assures that the Petitioners will adhere to all other restrictions imposed by the impugned Order dated 9th August, 2021.

4. Appearing on advance notice, Mr. Debakanta Mohanty, learned Additional Government Advocate for the State-Opposite Parties, points out that the impugned Order dated 9th August 2021 is a virtual reproduction of the Order dated 10th September, 2020 that was in place during the corresponding four months of in 2020. He points out that in 2020, initially W.P.(C) No.21016 of 2020 was filed on the issue of the restrictions on the holding of pujas and festivals. That writ petition was disposed of on 31st August 2020. On the basis of the observations in that order, the State Government issued the Order dated 10th September, 2020. It may be mentioned here that in the order dated 10th September 2020 issued by the State Government, there was a restriction on the height of the idol not exceeding 4 feet.

5. The said Order dated 10th September, 2020 was challenged in W.P.(C) No.23501 of 2020. That writ petition was disposed of by this Court on 16th September 2020 by an order, the operative portion of which reads as under:

“Having regard to the rival submissions and on perusal of the material on record, we find that the petitioners had earlier approached this Court in W.P.(C) No.21016 of 2020 which was decided on 31.08.2020. Nothing was submitted by the petitioners in that petition either in pleading or during argument about the size of the idol in the meeting convened on 28.8.2020 which was also attended by petitioner no.1-Suryakant Sanganeria. The State Government keeping in mind the resolution adopted in the said meeting and having regard to the order of this Court issued the

impugned order on 10.9.2020. This order covers not only Durga Puja, but also would apply to other Pujas, such as Laxmi Puja, Kali Puja and Kartikeswar Puja which are likely to take place in the months of October, November and December this year. This Court at this stage is not inclined to interfere with the decision of the State Authorities fixing the norms for holding Durga Puja and other pujas to contain the spread of COVID-19 and issue any specific direction.

Again, we consider the assertion of the petitioners and interveners that the idol of Maa Durga of the size of 7 feet has already been completed and also considering that as per the age old customs and rituals, such construction has to be completed before 'Mahalaya' on which day ceremony of "Khadidhara" shall be performed, this Court for that limited purpose as one time measure permit the Puja Committee represented by the petitioners, interveners and others, to approach the Commissioner of Police, Cuttack-Bhubaneswar by an appropriate representation positively by 7.00 P.M. today, who shall have their Puja Mandaps of all such representationists inspected by deputing any authorized officer to verify such assertion and if on verification their assertion is found to be correct, shall take appropriate decision with regard to rituals of puja and immersion of idols confined to them."

6. Subsequently, another set of writ petitions being W.P.(C) Nos.24486, 24416 and 24418 of 2020 were filed by the organizers of Durga Puja in Cuttack. In the said petitions, an order was passed on 16th October 2020 by this Court requiring the Government to clarify the position.

7. Pursuant to the order dated 16th October 2020, a memo was filed by the learned Advocate General. Paragraph-3 of that memo reads as under:

“3. That pursuant to the directions of this Hon’ble Court on 16.09.2020, the puja mandaps were inspected and in all, the following nine puja committees were found to be non-compliant as would be evident from the following:

“These inspections are documented by photographs taken on 16.09.2020 evening and 17.09.2020 morning. It shows that 142 Puja Committees have not started making idols, nine Puja Committees have made idols adhering to the norms set by the State Government, seven have built idols which are above 5 feet and two have exceeded 5 feet and have built idols that are 8 feet.”

The names of the nine Puja Committees are as follows:

- i. Sikharpur-Gandarpur-Mahanadi Vihar
- ii. Nuabazar
- iii. Mangalabag
- iv. Seikhbazar
- v. Binod Bihari (Balu Bazar)
- vi. Alishabazar
- vii. Kazibazar Adipitha
- viii. Upper Telengabazar
- ix. Firingibazar”

8. In those petitions, it was pointed out before this Court that some of the Puja Committees had already constructed the idols even before the State Government could issue the order dated

10th September, 2020. Particularly, as far as the Balubazar Puja Committee is concerned, the status of the idols made were incomplete and upto a height of 5 feet. This was taken note of by this Court in the following passage in its order dated 20th October, 2020:

“Further, on inspection by the authorized officer, so far it relates to Balubazar Puja Committee, the status of idols made (incomplete)-5 feet (without face/head). Similarly, so far as Firingibazar Puja Committee is concerned, status of idols made (incomplete)-8 feet (without face/head). So far as Sector-9 Abasika Sangha, Nimasahi Puja Committee and Jobra Nagarika Mancha are concerned, they have not constructed any idol by that time, i.e., 17.09.2020. In the said report, it has also been clarified that 142 Puja Committees have not started construction of idols, nine Puja Committees have made idols in compliance of the guidelines issued by the State Government, seven puja committees have constructed idols which exceeded five feet and above referred to two puja committees have constructed idols which exceeded eight feet. Therefore, this Court vide order dated 16.10.2020 called upon the State to give the list of nine numbers of Puja Mandaps who have constructed idols above five feet and eight feet. Accordingly, a Memo has been filed today wherein it has been mentioned that nine puja committees have constructed the idols more than four feet and they have constructed the idols as per the rituals.”

9. As a pragmatic measure, so that the idols already constructed were not left incomplete, this Court issued the following directions in its order dated 20th October, 2020:

“Since this Court has already declined to interfere with the guidelines issued by the Government on 10.09.2020, but as one time measure, this Court permits only these nine puja committees which have already constructed the idols of Maa Durga beyond 4 ft. to continue with Durga Puja for this year only as per the size verified during inspection. So far as other Puja Committees for Durga Puja and other pujas are concerned, the Puja Samittees/the Organizers shall have to adhere to the guidelines as to height of the idol issued by the Government. Further, for these nine puja mandaps, this Court directs the Special Relief Commissioner/appropriate State authorities to take necessary steps for immersion of their deities by following COVID-19 guidelines issued by the Central Government as well as State Government in accordance with law. This order shall remain confined to only above nine Puja Samittees/Pandals and shall not be treated as precedent. At the same time, this Court appreciate the Puja Samittees/Pandals who have adhered to the guidelines issued by the Government and, therefore, this Court hope and trust that they and all others will continue to abide by such guidelines in this and future puja’s to be held, during pandemic COVID-19 period.

With the above observation and direction, the writ petitions are disposed of.”

10. Thus, this Court declined to interfere with the Order dated 10th September, 2020 which contained, among several other measures, a restriction on the height of the idol by mandating that it should not exceed four feet. The said order dated 20th October, 2020 was not challenged and attained finality. The

Court made an exception for nine Durga Puja Samitis only because they had constructed idols even before the Order dated 10th September, 2020 came to be passed.

11. This time round, the impugned Order dated 9th August 2021 has been issued well in advance. The organisers of all pujas in the four months beginning August and ending November 2021 have been given sufficient notice of the restrictions. Secondly while the Covid-19 situation now may not be the same as it was in these months in 2020, the country as a whole and Odisha too is still not free from it entirely. The apprehension that any large congregation of people might turn out to be a super spreader event is real and not imaginary. There appears to be no good reason why the orders of this Court in the earlier Petition questioning the restrictions in 2020 should be differed from.

12. Thirdly, Durga Puja is indeed a major festival in the country, particularly in the eastern region. While Cuttack itself reportedly has over 150 Durga Puja Samitis/Mandalis, all over Odisha the number would apparently be in thousands. Relaxing a restriction for just one Durga Puja Committee would trigger similar demands all over, making it difficult for the Government to strictly enforce the measures it has put in place at a time when the State is still in the grip of the Covid-19 pandemic. On the other hand, barring the Petitioners, it appears that none of the other Durga Puja Samitis have found the restrictions put in place

by the impugned Order on the height of the idol to be hurtful of public sentiment or interfering with their celebration of the events.

13. Fourthly, the impugned Order dated 9th August 2021 has been issued taking into account all the Puja festivals in the months of August, September, October and November, 2021. These festivals include the Ganesh Puja, the Durga Puja, the Laxmi Puja, the Kali Puja and the Kartikeswar Puja. As noted in the impugned Order, these are occasions where “people usually congregate and get in touch with each other to celebrate the festival/Puja during which it is not possible to adhere to COVID appropriate behaviour and such congregations have a potential to cause spread of the virus.”

14. Finally, the Durga Puja festival itself is a combination of several elements of celebration, and the idol is but one important component. In respect of these many elements there has had to be some amount of restriction on the scale and size. It is in that context that the restriction on the height of the idol has to be viewed. It cannot be singled out as an ‘essential’ aspect of a tradition or practice without which, the festival itself may not have significance. On this particular aspect, the Petitioners have not been able to convince the Court that if the height of the idol is restricted to 4 feet, then somehow the sanctity of the occasion, the devotion and fervour associated with the festival, and the

religious sentiments of the people would be interfered with in a manner contrary to tradition. These may be matters of perception, but will have to be balanced against several countervailing interests and factors, which concern the health and safety of the public at large. These certainly are not easy decisions for the State to take. Equally, they are not to be interfered with lightly by the Courts unless strong legal grounds exist.

15. The Court is of the view that no case has been made out for modifying the condition in the Order dated 9th August 2021, and that too only for the Petitioners, that the height of the idol should not exceed 4 feet. Accordingly, the writ petition is dismissed. However, in the circumstances, there shall be no order as to costs.

16. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(B.P. Routray)
Judge

S.K. Guin