

Case Commentary

Odisha Vikash Parishad vs. Union of India & Ors.

Judgement Dated 22nd June 2020 by Hon'ble Supreme Court of India.

Facts:

The Supreme Court had order dated 18th June 2020 which had restrained the respondent to hold the Rath Yatra this reason by the reasoning the danger possibility if gathering of 10 to 12 lakh devotees for a tenure of 10 to 12 days. It had the possibility to spread COVID-19 virus due to Rath Yatra which could have been harmful for large number of people.

It was impossible to track all infected people after they attended the festival and go back to their respective homes. It had insufficient equipment to screen for the medical conditions of all those who converge on the cities for Rath Yatra. The court were informed that in the 18th -19th century this kind of yatra was the key cause for the spread of cholera and plague wildly.

In past order, it suggested to the parties that the procession of chariots could be allowed if and only if general congregation of participation is avoided. The court was informed the impossibility to meet the conditions. Hence, the court was with no option but to grant an injunction to restrain the Rath Yatra itself.

The Odisha Vikash Parishad was dissatisfied with order passed. Hence, they challenged the order with new developments and court allowed to hear the same.

Issues:

Article 14: Equality Before Law and Equal Protection of Laws- The petitioner held that equal protection should be given for the religious interest to follow the festival which has been followed for more than 400 years when the guidelines are ready to be followed by the temple authorities and State of Orissa.

Article 21: Freedom to right to life and personal liberty- The public interest is at risk if the festival is conducted, it could be the cause to spread the virus in the state with no or little amount of medical facility. The citizen right to life and personal liberty is violated.

Article 25: Freedom of conscience and practise of religion- The temple authorises is seek justice as their fundamental right to practice their religious activity if violated despite having prior permission to construct the chariot during lockdown.

Article 26: Freedom to manage its religious affairs subject to reasonable restrictions – The temple has the fundamental to manage its own religious affairs with subject to guidelines to be followed which they agreed but the court did not take their alternative theory seriously.

History of the festival:

Rath Yatra is old as 462 years and the biggest processions take place in India. It is believed to be the oldest Rath Yatra or chariot procession in the world started in the 1558 year. The word Jagannath is a combination of words Jaga denoting the Universe and Nath denoting Lord which means “Lord of Universe”. Lord Jagannath is considered to be the reincarnations of avatars of Lord Vishnu. The festival is celebrated by devotees by pulling the three chariots through the streets of Puri to the Gundicha temple. The ideology to pull the chariots of their God during the procession is worship and pure devotion of the Lord and destroys the sins which committed knowingly or unknowingly. The speciality of the chariot made from 4000 pieces of woods constructed over 42 days by only one family as their hereditary rights.

India is known for different religions and secularism. For us, religion is not only for celebration but also for unity and brotherhood. India has accepted all religion form across the world until it has harmed the fundamental right of any individual or the society as the whole.

Rath Yatra is an important festival for citizens and the state as their symbol of culture and heritage.

Indian Secularism is different concept where the it means the church and the state manage its own affairs and matter while India stand for ‘All religion are equal and Respect all religion’.

Provisional Laws for religion in India:

Constitution under Article 25 to 28 protects and guarantees the fundamental right to follow any religion and practise the same. Secularism in India is different compared to western European countries. In the western country, the state and the church (religion) are separate and do not intervein in each other’s affair and matters. Whereas in India, secularism is defined as respect for all religions.

India has no restriction at celebrating festival like Diwali, Christmas, Eid, various new year etc. and have public holiday and general norms issued by the central and state. The government has set the Minister of Minority Affairs, the National Human Right Commission (NHCR) and

the National Commission for Minorities (NCM) for investigation if any dispute arises from discrimination and makes recommendations for the remedy of the issue.

Reason why the restrained was imposed by Supreme Court:

At that given situation, India was among the top countries for the Covid-19 confirmed cases crossing 500,000 marks. Since March 2020, the Government of India and the World Health Organisation had given importance to wear the mask, social distancing and restriction on the public gatherings.

For the months between March and June, all public gathering events and sports event were banned under lockdown such as a wedding, temple and religious places, shopping mall, public parks, final year examination etc for public safety.

National security is always given the supreme right given in any situation in over the right to personal liberty as per Article 21 of our Indian Constitution. The right to personal liberty is halted when a lockdown or any emergency is declared.

Importance of timeline of the festival:

- The construction of Rath Yatra begins on 8th May instead of 26th April this year, the date of Akshaya Tritiya due to lockdown. The state government opened the Ratha Khala after getting permission from the Ministry of Home Affairs for the construction.
- The wooden log required for the construction of Rath is always provided by the state government free of cost and has launched Jaganath forest project for the same.
- After the construction was done, all the carpenters and other people involved had put into isolation for the conduct of Rath Yatra
- Supreme Court of India has issued an order which restrained the authority to conduct the Rath yatra due to pandemic situation. The festival attracts gathering of 10 to 12 lakhs devotees over a 10 to 12 days period. It could lead to the due danger of spreading the virus.
- The order also claimed that the yatra was not conducted 32 times between 1558 and 1735. Also, in the 18th-19th century, the yatra was responsible for the spread of cholera and plague.
- Earlier before the order was passed, the Supreme Court had suggested processing the festival without a general congregation of participation.

- The apex court order was disheartened all people associated with the festival as the chariot was completed with hard work and overcoming the obstacles.
- On 22nd June, the Supreme Court of India uplifted its stay for the festival considering the point plead by the state. The Court made it clear in the fresh order that if the guideline is not followed properly, it will be the volenti non fit injuria (willing to suffer, no injury is done) if any consequence arises.
- On 23rd June, the Rath Yatra was taken place and all the safety norms and guideline were followed with no impact to the pandemic. The spirit of the religions was the ultimate faith of the citizen in the state which adhered to all guidelines and performed the activity.

The order was changed on the following ground:

The Supreme Court of India in its earlier order dated 18th June 2020 had suggested conducting the Rath yatra without public procession, but the same was not accepted by the respondent. The order has passed in the welfare of people during the pandemic situation, as the Latin legal maxim says “Salus Populi est lex suprema” i.e. welfare of people is the supreme law.

But later on, many petitions were filed in the apex order to modify or reconsider their earlier order. The point which made the order change was as follows: -

- People are connected with the festival culturally and religiously for their pride and identity, and not able to conduct it is a violation of their right of liberty under Article 21.
- Petitioner pleaded that it is not impossible and impractical of the State Odisha government for conducting the festival following all the norms and guidelines issued by the centre. It cited an example of how the construction a chariot took place with all safety and social distancing as 372 people were involved.
- The state of Odisha had managed the pandemic excellently, and had a few cases with a small amount of death.
- All concerned people involved in the yatra were in isolation and only negative tested shall be participating.
- It brought out an important point that is the area where the temple is located and yatra where it will take place, has been green zone during the pandemic

Hence, the apex court saw no reason to uplift the stay order and to allow the Rath yatra festival.

Implementation of the Judgement:

Assuming few part of the society make think that the apex court changed its stand due to pressure from the public and central government due to a religious issue and bend down to it. The assumptions are highly wrong as both the order always had the purpose of “**Salus Populi supreme lex esto**” and “**Audi alteram parterm**” i.e welfare of people is the supreme law and let the other party be heard.

Considering the legal maxim, our apex court stood by it and made the judgement in the best fit of the people.

We understand the norms of social distancing and restriction of public gathering should be adhered to as per order from the Government of India. But the virus has not come with a fixed date of cure. While people lock in the house, religious peace is only wish for. Few things cannot be felt virtual due to emotional and religious attachment.

Conclusion:

Considering the fact there was clash between the fundamental right Article 21 vs Article 25.

It can be considered that Article 21 was upheld as the citizen of the state were not only who participated to seek for the consider to remove the stay order from the festival. We need to understand in India the religious spirit and intentions is always held with the constitutional validity.

When the citizen and the State Government stand united for a common cause and knowing their legal right and consequences if the legal duty not followed. The Hon’ble Supreme Court has no reasons to uplift the stay injunction when the petitioner and the respondent had reached the common understanding and harmonize their plan of action.

Our Preamble to constitution has the word ‘fraternity’ which had achieved in true sense with this judgement and post result after the festival took place with no impact on the pandemic. We are truly having the brotherhood and sovereign to our country. The independence fought by our elders are not gone into vein.

We stand united and no element shall harm or destroy our sovereignty.