

IN THE HIGH COURT OF ORISSA AT CUTTACK

Writ Petition (Civil) No. 15941 of 2021

In Re: Court on its Own Motion

-versus-

Union of India and Others

....

Opposite Parties

CORAM:
THE CHIEF JUSTICE
JUSTICE B. P. ROUSTRAY

ORDER
29.04.2021

Order No.

02.

1. This matter is taken up by video conferencing mode.
2. Heard Mr. Ashok Parija, learned Advocate General for the State of Odisha, Mr. P.K. Parhi, learned Assistant Solicitor General for the Union of India and Mr. D. P. Dash, learned Vice President and Dr. J.K. Lenka, Secretary, Orissa High Court Bar Association.
3. The Supreme Court by order dated 23rd March, 2020 in *Suo Motu Writ Petition (Civil) No. 3 of 2020 (In Re: Cognizance for Extension of Limitation)* had issued the following directions:

“This Court has taken *Suo Motu* cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/ appeals/all other proceedings within the period of limitation prescribed under the general

law of limitation or under Special Laws (both Central and/or State).

To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.

We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.

This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/Tribunals within their respective jurisdiction.

Issue notice to all the Registrars General of the High Courts, returnable in four weeks.”

4. On 8th March 2021 it was noticed that the country was returning to normalcy and all courts and Tribunals had started functioning either physically or by virtual mode. Accordingly, the extension of limitation was regulated and brought to an end by the Supreme Court by an order of that date.

5. On 27th April, 2021, the Supreme Court in an application by the Supreme Court Advocates on Record Association, viz., Miscellaneous Application No. 665 of 2021 in SMW (C) No. 3 of

2020, took note of the resumption of the daily surge in COVID cases in Delhi. The Supreme Court also took judicial notice of the fact that the surge was not limited to Delhi but “it has engulfed the entire nation”. The following order was, therefore, passed by the Supreme Court:

“The extraordinary situation caused by the sudden and second outburst of COVID-19 Virus, thus, requires extraordinary measures to minimize the hardship of litigant–public in all the states. We, therefore, restore the order dated 23rd March, 2020 and in continuation of the order dated 8th March, 2021 direct that the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders.

It is further clarified that the period from 14th March, 2021 till further orders shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

We have passed this order in exercise of our powers under Article 142 read with Article 141 of the Constitution of India. Hence it shall be a binding order within the meaning of Article 141 on all Courts/Tribunals and Authorities.

This order may be brought to the notice of all High Courts for being communicated to all subordinate courts/Tribunals within their respective jurisdiction. Issue notice to all the Registrars General of the High Courts, returnable in 6 weeks.

List the Miscellaneous Application on 19th July, 2021.”

6. As a result, the need for this Court to pass any separate order on the above aspect of extension of limitation is obviated. As far as certain other aspects are concerned, this Court had earlier during the first wave of the COVID-19 pandemic passed a detailed order on 5th May, 2020 in W.P.(C) No. 9095 of 2020. There were several interim orders passed subsequently modifying that order. With the resumption of hybrid hearing in this Court, and in the subordinate courts, the aforementioned orders passed from time to time were discontinued by this court by an order dated 17th February, 2021 and W.P.(C) No. 9095 of 2020 was disposed of.

7. Now with the Supreme Court having taken suo motu judicial notice of the resurgence of the COVID-19 pandemic all over the country, and with the position in Odisha being no different, this Court considers it appropriate to issue the following directions on the aspects not covered by the above directions issued by the Supreme Court of India, in exercise of its powers under Articles 226 and 227 of the Constitution of India, under Sections 482 and 483 Cr PC and Section 151 CPC:

- (i) That all interim orders/directions issued or protection granted including any order requiring any compliance by the parties to such proceedings, by this Court or any court subordinate to it or any Family Court or Labour Court or

any Tribunal or any other Judicial or Quasi Judicial forum in the State of Odisha, over which this Court has power of superintendence, subsisting as on this day, and those passed hereafter, unless a longer date is specified, shall stand extended till 30th June, 2021.

- (ii) That the interim orders or directions of any court in the State, which are not of a limited duration and were meant to operate till further orders, shall continue to remain in force until modified / altered / vacated by specific order of the court concerned in a particular case.
- (iii) Filing of written-statement or return in any Suit or proceeding pending before any Civil Court or any other forum, unless specifically directed, shall stand extended till 30th June, 2021. It is however clarified that, if the parties are in a position to file such written-statement or return, they may file it before such date.
- (iv) That the orders of eviction, dispossession, demolition, etc. passed by this Court or any court subordinate to it or any Tribunal or judicial or quasi judicial forum, except those in relation to medical jurisdiction, shall remain in abeyance till 30th June, 2021.
- (v) All orders granting interim protection in applications under Section 438 Cr PC by the High Court or Sessions Courts and limited by time-frame specifying an expiry date, shall stand extended till 30th June, 2021. However, any party

aggrieved by the conduct of the accused on such interim protection, may move the Court in seisin over the matter for cancellation of the interim protection, if prejudice is caused to him / her.

(vi) All orders granting interim bail under Section 439 Cr PC by the High Court or Sessions Courts and limited by time-frame specifying an expiry date, shall stand extended till 30th June, 2021 subject to the condition that, on every 10th day from today the defence counsel shall file a petition supported by affidavit before the competent court in seisin over the matter, to the effect that the person on interim bail is not abusing his/her liberty and he/she is living within the jurisdiction of the Court. If the 10th day falls on a holiday, such affidavit may be filed on the re-opening day succeeding next.

(vii) Parole granted to a person through orders passed by a Court exercising the criminal jurisdiction and limited by time-frame specifying an expiry date, shall stand extended till 30th June, 2021.

(viii) Unless there is necessity of arrest for maintenance of law and order, in a cognizable offence prescribing sentence up to seven years imprisonment, the police should not be in a hurry to arrest the accused without complying with the provision of Section 41(A) Cr PC. This shall be effective till 30th June, 2021. (This is however not an interdict or a

direction to curb power of the police to arrest, but on the face of the crisis, an advisory to be followed by the police so far as it is practicable and possible).

(ix) It is further directed that the State Government or any of its Department or any Municipal Corporation / Council / Board or any Gram Panchayat or any other local body or any other agency and instrumentality of the State, except where it is a medical facility, in case lockdown prevails, shall not take any action for eviction, and demolition in respect of the property, over which any citizen or person or party or any Body Corporate has physical or symbolic possession as on today till 30th June, 2021.

(x) That it is further directed that if the Government of Odisha and/or any of its Department and/or functionaries, Central Government and/or its departments or functionaries or any Public Sector Undertakings or any Public or Private Companies or any Firm or any individual or person is/are, by the order of this Court or any Court subordinate to it or the Tribunals, required to do a particular thing or carry out certain direction in a particular manner in a time frame, which expired or is going to expire at any time, during the period of lockdown or the extended lockdown, if there is any, time for compliance of such order shall stand extended up 30th June, 2021, unless specifically directed otherwise.

8. To dispel ambiguity, it is clarified that:

(a) Those interim orders / directions, which are not for a limited duration and are to operate until further orders, shall remain unaffected.

(b) That, in case, extension of interim order(s)/ direction(s) as directed by us cause undue hardship and prejudice of any extreme nature to any of the parties to such proceeding(s), such parties would be at liberty to seek appropriate relief before the competent Court(s), Tribunal, Judicial or Quasi-Judicial Forum, and these directions shall not be a bar for such Courts / Forums to consider such petition(s) filed by the aggrieved party, on its merit, after due notice to the other side.

(c) Our directions in para 7 (ix) shall have no effect if the State is required to resort to eviction or demolition for any urgent public purpose in the larger interest of the public.

(d) All Courts, Tribunals, judicial and quasi-judicial authorities are directed to abide by these directions, and the parties seeking relief(s) covered by these directions can file hard copy or soft copy of this order before the competent court / forum, and such copy of the order shall be given due weightage.

9. This order be published in the official website of the Court and circulated to all concerned Courts, Tribunals, judicial and quasi judicial authorities of the State, learned Advocate General, learned Assistant Solicitor General for Odisha and the Chairman of Odisha

State Bar Council. We request the Chairman of the State Bar Council to circulate this order to all the Bar Associations of the State.

10. The Registry is directed to give wide publicity to this order so that the litigants can know about the order and shall not rush to the Court for different relief(s) covered by these directions. List this matter on 29th June, 2021.

11. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020 as modified by Court's Notice No.4798, dated 15th April, 2021.

(Dr. S. Muralidhar)
Chief Justice

(B.P. Routray)
Judge

A.Dash/PS