CONTRIBUTION OF THE ORISSA HIGH COURT TO THE DEVELOPMENT OF INDIAN LAW

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Justice B. P. Das, Judge
Orissa High Court

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Orissa was within Bengal Presidency which included Assam and Bihar and Orissa. In 1905 Lord Curzon partitioned Bengal into two parts and a new province was born with Assam and Eastern Bengal. Bihar and Orissa were retained with the remaining parts of Bengal as province of Bengal. But subsequently the two parts of Bengal were again united. Bihar and Orissa were separated from Bengal Presidency to form new province of Bihar. By the notification dated March 22, 1912 a new province of Bihar and Orissa was formed. But the province of Bihar and Orissa was kept under the jurisdiction of Calcutta High Court. On February 9, 1916 the King of England in exercise of the powers under section 113 of the Government of India Act, 1915 issued Letters Patent constituting the High Court of Patna. Orissa was placed under the jurisdiction of Patna High Court. Thereafter Circuit Court of Patna High Court for Orissa was created

and its first sitting was held on May 18, 1916. After a long lapse of time, on April 1, 1936 Orissa got her statehood but no separate High Court was provided. After demand of the people of Orissa and more particularly the lawyers and the litigant public, the Government of India on April 30, 1948, in exercise of the powers conferred by section 229 (1) of the Government of India Act, 1935 issued Orissa High Court Order, 1948 declaring that from the 5th day of July, 1948 "there shall be a Court of the Province of Orissa which shall be a Court of Record." Subsequently by Orissa High Court (Amendment) Order, 1948, the date of establishment of the High Court was changed from 5th day of July to 26th day of July, 1948. On July 26, 1948, Orissa High Court with Shri Birakishore Ray as the Chief Justice and Shri B. Jagannadha Das, Shri L. Panigrahi and Shri R. L. Narasimham as Puisne Judges was inaugurated by Justice Hiralal J. Kania, the then Chief Justice of India, and the function was presided over by Mr.Asaf Ali, Bar-at-law, the Governor of Orissa.

From the inception of the Orissa High Court till date, several judgments have been rendered by its Judges towards the development of law and the contribution of the High Court is written in indelible ink in the annals of the history of Orissa. It interpreted various statutory provisions and imparted several decisions which contributed to the

development of law. Though it is not possible to give all those judgments that have been delivered since 1916, when the Patna High Court for Orissa held its Circuit Court at Cuttack, we can cite some of the landmark decisions of this Court. Let us now come to the judgments rendered by this Court.

1. In ***A. Narain Murty & anr. V. The King, ILR 1949 Cuttack 244***, dealing with the right of the prisoner, this Court held that the right of the prisoner to have the assistance of a lawyer in the conduct of his case is the minimum right of a citizen of a free country. Any infringement of this rule is a serious impediment to the right of a prisoner to have assistance of a lawyer in the conduct of his case. It was held that interview between prisoner and advocate, communication to whom is privileged under the law, is to be done in the presence of a Jail Officer, within the sight, but not within the hearing distance. This is a case like the one decided by the Supreme Court on Article 21 of the Constitution of India. The Constitution of India came in the year 1950 but much before that, this Court could foresee the rights of the prisoners vis-à-vis his consultation with lawyer and the judgment of this Court is one of the rarest of rare judgments on the rights of prisoners for which now many institutions are fighting for.

2. Now we can refer to ***K. C. Gajapati Narayan Deo v. State of Orissa, AIR 1953 SC 375***, wherein the apex Court held that the doctrine on colourable legislation does not involve any question of 'bona fides' or 'mala fides' on the part of the legislature. The whole doctrine resolves itself into the question of competency of a particular legislation to enact a particular law. If the legislature is competent to pass a particular law, the motives which impelled it to act are irrelevant. If Legislature lacks competency, the question of motive does not arise at all. The aforesaid judgment was rendered on the appeals preferred against the judgment passed by a Bench of this Court by eminent jurists Hon'ble Jagannadha Das, C.J. and Narasimham, J. (as their Lordships then were), reported in ***AIR 1953 Orissa 185,*** and the view taken by this Court was affirmed by the apex Court and the appeals were dismissed. In that case challenge was made to the Orissa Estates Abolition Act, 1952, which was held by this Court to be valid and not open to any of the constitutional objections but leave to appeal was granted by this Court under Article 132 (1) of the Constitution since it involved substantial question of law as to the interpretation of the Constitution.

3. In ***Surendra Mohanty v Nabakrishna Choudhury, AIR 1958 Orissa 168,*** this Court dealt with a

matter of contempt of High Court, which was initiated against the Chief Minister of Orissa Shri Nabakrishna Choudhury in respect of a speech made by him in the Orissa Legislative Assembly on March 8, 1956 and published in a local daily. The Bench presided over by Hon'ble Chief Justice Narasimham, deciding the question of locus standi of Shri Surendra Mohanty, who was a Member of the Parliament and brought the matter to the notice of the Court, held that maintenance of the prestige and dignity of High Court is the concern of every citizen of India and safeguarded by some of the important provisions of the Constitution such as Arts.211 and 215. It is also the special concern of a Member of Parliament who, by the oath taken by him while sitting as a member, undertakes to bear true faith and allegiance to the Constitution. If therefore a Member of Parliament feels that a member of the State Legislature has misused the right of freedom of speech conferred on him by the Constitution and that his speech has a tendency to impair the dignity and prestige of the High Court, then it cannot be said that he is not entitled to bring to the notice of the High Court the objectionable passage, for such action as the High Court may desire to take. Thus, an objectionable speech made on the floor of a Legislature can be brought to the notice of the High Court by a private party.

Ultimately this Court held that the speech of the Chief Minister has surely a tendency which is likely to shake the confidence of the public in the High Court and to impair the administration of justice and further viewed that it is not only the dignity of the High Court or of the individual Judges constituting the High Court which is involved but it will also directly or indirectly affect the public who look to the High Court for due administration of justice. The essence of the offence is that it is against the public not the Judge, an obstruction to public justice. It was found that the speech read as a whole amounts to contempt. In view of the finding of the Court that the offending speech is privileged and that this Court has no jurisdiction, the rule against Shri Choudhury was discharged.

4. In ***Dr. Binapani Dei v. State of Orissa, AIR 1965 Orissa 81***, this Court laid down the law that the principles of natural justice are attracted even to administrative orders resulting in civil consequences.

5. In ***Ghasiram Majhi v. Omkar Singh, 34 (1968) CLT 328,*** which is a case under the Representation of Peoples Act, 1951, Hon'ble G. K. Misra, C.J, held that where there is allegation of corrupt practice, the standard of proof necessary for setting aside any election would be as

in a criminal case. The burden of proving that the election of a successful candidate is to be set aside for corrupt practices lies heavily upon the petitioner.

6. In ***Hari Sahu v. Union of India, 37 (1971) CLT 860,*** this Court while liberally defining the “doctrine of eclipse” and its application to the pre-constitution law, held that the “doctrine of eclipse” applies to valid pre-constitution laws while it has no application to post-Constitution laws. The doctrine of eclipse means that a valid pre-constitution law which became void either in whole or in part becomes inoperative so long as its inconsistency with Part III exists. Such a law however does not disappear from the statute book as its existence before the date of the Constitution is recognized. The moment the pre-Constitution valid law is amended so as to remove the inconsistency, it resuscitates or revives into life. The eclipse of coverage that was cast on account of the inconsistency disappears the moment it is brought in conformity with the Chapter of Fundamental Rights.

7. Interpretation of Articles 163, 164, 361(1) and 356 of the Constitution of India came up before a Division Bench of this Court in ***Bijayananda Patnaik v. President of India, 1973 ILR Cuttack 1127,*** when Shri Bijayananda Patnaik, the then Leader of the Opposition raised a

question that after resignation of the Ministry of Smt.Nandini Satpathy, the Governor should have called the Leader of the Opposition as a matter of course to form the Ministry without testing the strength and if at all the strength was to be tested, it should have been on the floor of the House. Relying upon various decisions as well as the provisions of Article 356 of the Constitution, this Court held that though in Britain there were certain conventions prevalent, but those conventions were not enforceable through Court and also found that the Governor did not honour the conventions in certain manner but the decision of the Governor was not justiceable as breach of convention was not enforceable in Court.

8. Dealing with a case where alternative remedy was not exhausted and the petitioner had approached this Court under Articles 226 and 227 of the Constitution, this Court held that writ petition is maintainable without exhausting the statutory remedy where the act complained of is prima facie without jurisdiction. ***(Dhaneswar v. State, 62 (1986) CLT 60).***

9. Yet in ***Bhaskar Panda v. State of Orissa, 62 (1986) CLT 450,*** this Court held that when a valuable right of a society to contest election to the Board of Directors of

the Central Bank was infringed by an order of rejection of nomination, which on the face of it appeared to the Court to be illegal and was based on erroneous date and when there was no question of investigation into disputed questions of fact, and the error was apparent on the face of the impugned order, in such circumstance, the so-called alternate remedy of raising a dispute could not be held to be an efficacious one and, therefore, the Court would unhesitatingly exercise its jurisdiction under Article 226.

10. As to the maintainability of the writ petition as against private educational bodies, this Court in a landmark judgment held that private educational institutions also perform public duty inasmuch as they perform a most useful social function in imparting education and that too in accordance with the curriculum prescribed by respective statutory bodies. In this regard reference may be made to the decision in ***Basanti Mohanty v. State of Orissa, 72 (1991) CLT 127***, rendered by a Bench presided over by Hon'ble B. L. Hansaria, C.J. (as his Lordship then was), which relying upon the judgment in *Shri Anadi Mukta Sadguru S.M.V.S.J.M.S.Trust v. V.R.Rudani, AIR 1989 SC 1607, as well as Antaryami Rath v. State of Orissa, 70 (1990) CLT 642***,** ruled that the word 'authority' in Article 226 of the Constitution would not be confined only to

statutory authorities but would cover any other person or body performing public duty. It was further held that there cannot be any doubt that the private educational institutions also perform public duty inasmuch as they perform a most useful social function in imparting education and that too in accordance with the curriculum prescribed by respective statutory bodies. So, it was observed that they discharge a very important public function and, therefore, it was concluded that private educational institutions would be amenable to the writ jurisdiction of the High Court on the ground that they perform public duty. This is a landmark judgment in which the private educational institutions were brought into the fold of 'authority" in Article 226 of the Constitution and made amenable to the writ jurisdiction. Same view was also taken in a later decision in *Susama Patnaik v. M.C., B.J. English Medium School, 73 (1992) CLT 494.*

11. In ***Bhabani Shankar Tripathy v. Secretary to the Govt. of Orissa, Home Department, 73 (1992) CLT 567 : 1992 (I) OLR 344,*** a sensitive issue was raised before this Court in a writ petition filed for a declaration that neither the State Legislature has competence to enact a law for shifting of the seat of the High Court from Cuttack to Bhubaneswar nor has the executive power to direct shifting

and for an order restraining the executive from taking any decision in the matter of shifting. A Division Bench presided over by Justice R. C. Patnaik, (as his lordship then was) after referring to the decisions in *Chaitanya Kumar v. State of Karnataka, AIR 1986 SC 825 and Dr.D.C.Wadnwa v. State of Bihar, AIR 1987 SC 579*, held that Article 10 of the Orissa High Court Order vests authority exclusively in the Chief Justice to appoint the seat or seats of the High Court including change of the seat of the High Court with the approval of the Governor and that such power can be sub-planted by law enacted by the Parliament. The State Legislature has no authority to enact law as regards the seat or seats of the High Court or to change the seat of the High Court. Since no law has been enacted and, as the learned Advocate-General has said it was a mere 'passing thought', a mere wish of the Government to shift the High Court, the Court was of the view that the writ petition was premature.

12. This Court tested the constitutional validity of the Orissa Rural Employment, Education and Production Act, 1992 in ***Mahanadi Coalfields Ltd. V. State of Orissa, AIR 1994 Orissa 258,*** when the State Govt. under the aforesaid Act sought to impose tax on coal-bearing land and the Bench presided over by Hon'ble Justice G. B.

Patnaik (as his Lordship then was) held that the impugned levy in question is a tax on minerals or mineral rights on the land and hence the Legislature did not have competence within Entry 49 of List II of the Seventh Schedule to the Constitution of India to legislate the impugned Act. This decision was affirmed by the apex Court on the appeal preferred against such decision.

13. In ***Tata Iron & Steel Co. Ltd. V. Union of India, 82 (1996) CLT 797,*** this Court ruled that even though section 5 (2) of the Mines and Minerals (Regulations & Development) Act, 1957 does not embody any provision for an opportunity to the applicant having regard to the nature of the exercise, the consequences that could ensure, it was incumbent on the Central Government to give an opportunity of hearing. The giving of reasons is one of the fundamentals of good administration. The requirement of furnishing 'reason' is a shackle on acting arbitrarily and whimsically.

14. Hon'ble Chief Justice S. N. Phukan and Justice A. Pasayat, (as his Lordships then were), dealing with a public interest litigation in ***Villagers of Jajarsingh v. State of Orissa, 83 (1997) CLT 667,*** observed that public interest litigation which has now come to occupy an important field

in the administration of law should not be private interest litigation. There must be real and genuine public interest involved in the litigation, and it cannot be invoked by a person or a body of persons to further his or their personal causes or satisfy him or his personal grudge and enmity. The Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. A person acting bona fide and having sufficient interest in the proceeding of public interest litigation will alone have a locus standi and can approach the Court to wipe out violation of fundamental right and genuine infraction of statutory provisions but not for personal gain or private profit or political motive or, any oblique consideration. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest any ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief.

15. In ***Indumati Pattanaik v. Chief Manager and Authorised Officer, Bank of India, Bhubaneswar, 2005***

(II) OLR 309, the Court considering application of sections 36 and 13 (2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and Article 62 of the Limitation Act, 1963, held that Article 62 of the Limitation Act prescribes the limitation for enforcing the right of a mortgagee where immovable property is offered as collateral security by way of mortgage for a loan advanced. The period prescribed under the said Article is twelve years. So, issuance of notice under section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was held to be clearly barred by limitation after expiry of twelve years.

16. In ***Mrs. Madhumita Das v. State of Orissa, 100 (2005) CLT 465,*** a Division Bench presided over by Hon'ble Justice I. M. Quddusi held that change in the norms published in the advertisement for recruitment without notice to the candidates and the general public and without issuing corrigendum of the advertisement in question is not permissible. It was further held that once an advertisement was issued to fill up a post in any office under the State, it is the duty of the recruiting authority to give necessary information to all in a precise and clear manner. Non-publication of the norms changed subsequently after

starting of the selection process is violative of Article 16 of the Constitution and thus is not sustainable in the eye of law. This decision was affirmed by the apex Court.

17. In ***M/s. The Indure Limited v. Commissioner of Sales Tax, Orissa, 102 (2006) CLT 309,*** Hon'ble A.K.Ganguly, J. (as his Lordship then was) sitting with Hon'ble I. Mahanty, J. deciding a case on the issuance of re-assessment notice under section 12 (8) of the Orissa Sales Tax Act, 1947 held that re-assessment proceeding cannot be blindly initiated on the audit objection by the Sales Tax Officer without any independent application of mind.

18. In another landmark judgment in ***M/s. Z. Engineers Construction (P) Ltd. V. Bhubaneswar Development Authority, 102 (2006) CLT 441,*** Hon'ble A.K.Ganguly, J, (as his Lordship then was) sitting with the then Hon'ble Chief Justice S. B. Roy interpreting the provisions of the Orissa Development Authorities Act, 1982 and deciding the issue on the scope of interference by writ court in sanction of building plan, which bristles with various technical considerations, it was held that it is not normally within the domain of a Writ Court to decide whether the technical requirements are to be fulfilled by the petitioner or

whether insistence on those technical requirements by the BDA is at all necessary or not and the Court normally does not have the expertise to decide whether those considerations are germane or not, unless of course the authorities' insistence on compliance with the technicalities is palpably perverse.

19. In ***M/s.Serajuddin and Co. v. Union of India, 103 (2007) CLT 639,*** the Bench presided over by Hon'ble Chief Justice A.K.Ganguly while interpreting various provisions of the Mineral Concession Rules, 1960, on the question of granting relief in the absence of prayer, held that if a case is made out for granting relief, the Court cannot refuse to grant the same in the absence of a prayer. Merely because proper relief has not been asked, a Writ Petition cannot be thrown out. But if a point is never taken in the Writ Petition and if the same is never argued before the Court, no relief can be given on that. In other words, mere absence of a specific prayer cannot prevent a writ Court from granting the relief.

20. A Bench of this Court led by Hon'ble Chief Justice A.K.Ganguly in ***Smt. Sadin Meher v. State of Orissa, 2007 (II) OLR 780,*** deciding a writ petition filed under Articles 226 and 227 of the Constitution of India

where prayer was made for investigation of the death of petitioner's husband by CBI or Crime Branch, with the aid of section 36(2) of the Protection of Human Rights Act, 1993, directed for fresh enquiry by the State Human Right Commission on the complaints which were made by the petitioner despite the bar under section 36(2) of the Protection of Human Rights Act, 1993, when the conscience of the Court was not satisfied with the kind of enquiry which had been held by the Human Right Protection Cell. To dispel that brooding the sense of injustice in the mind of the petitioner, this Court exercised its power under Article 226 of the Constitution on principles of equity, justice and good conscience observing that law bends before justice and the wide powers under Article 226 of the Constitution has been conferred on the High Court to reach injustice where it is found.

21. In the decision in ***Chambara Soy v. State of Orissa, CLT (2008) Supp. Crl. 144,*** a Bench of this Court presided over by the author (Justice B. P. Das) while interpreting Articles 19(1)(d) of the Constitution of India, held that resorting to road blockages by political persons, organizations, students and villagers thereby bringing a grinding halt to the movement of traffic on public roads and ultimately disrupting the normal run of traffic and causing

unnecessary harassment to the general public amount to interference with the fundamental rights of the citizens which have been guaranteed in Article 19(1)(d) of the Constitution. Relying upon various judgments of the apex Court and following certain principles of English law, the Court decided that destruction made at the time of blocking the road to the public and private properties is certainly an act affecting public order because the object obviously is vandalism.

The Orissa High Court has not lagged behind in dealing with cases of personal laws.

22. In ***Sk.Mamtaj Alli v. Sk. Alli, 34 (1968) CLT 943,*** where a donor conveyed some properties to the donees, directing performance of some religious ceremonies according to Muslim tenets, it was contended that in the absence of any mention in the deed of the property being dedicated to God, it was not a wakf, the Division Bench of this Court held that the use of the expression ‘wakf’ is not in a document creating a wakf and that it is not essential that there should be an express dedication of the properties in favour of the God.

23. In dealing with a motor accident claim appeal under section 110-D of the old Act, i.e., the Motor Vehicles Act, 1939, in the case of ***National Insurance Company v. Magikhaia Das, reported in 42 (1976) CLT 648***, a Full Bench of this Court had the occasion to interpret the provision of section 96 thereof (section 149 of the 1988 Act), which provided for the duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks. Hon'ble Justice Ranganath Misra, (as his Lordship then was) speaking for the Full Bench of this Court ruled that the insurer is entitled to raise those pleas which could be raised by it before the Claims Tribunal and the appeal would not be maintainable on the grounds which could not be raised before the Claims Tribunal by the insurer. The statutory provision is clear that an insurer who has been made a party to the proceeding for recovery of compensation can resist the claim only on the ground mentioned in sub-section (2) of section 96 of the old Act and it is not open to raise any other plea. This decision of the Full Bench was found to be the correct legal position in many a judgments of the Supreme Court.

24. This Court has rendered a very important decision in ***Collector, Cuttack v. Padma Charan Mohanty, 50 (1980) CLT 191***, on Order 41, Rules 1 and 5

and Order 27, Rule 8-A of the C.P.C. (as amended by the Amendment of 1976), on the question as to whether granting stay in execution case upon furnishing security, applies to the Govt. This Court held that the security is generally required to be furnished where the appellant's solvency is doubtful and to secure the fruits of litigation to the respondent in the event of his ultimate success. The solvency of the Government cannot ever be in doubt. This point was raised after omission of Rule 7 of Order 41 and re-enactment of Rule 8A of Order 27. Except this decision rendered by the Orissa High Court, no other High Court in the country has rendered decision on the aforesaid point.

25. While dealing with the concept of natural justice, this Court in ***Premananda v. Revenue Officer, 52 (1981) CLT 523,*** held that the principles of natural justice are the bedrock of rule of law to which our democracy is wedded. It behaves all authorities – high or low – to bear the same in mind while dealing with citizens or their rights and obligations.

26. In ***State of Orissa v. D. C. Routray, 56 (1983) CLT 7,*** this Court while dealing with the scope of examination of arbitrator in a proceeding under section 30 of the Arbitration Act, 1940, held that where misconduct is

alleged, but not frivolously, the arbitrator is a competent witness and his evidence is admissible to show over what subject matter he was exercising jurisdiction, into which he was inquiring. But the power is to be exercised cautiously and sparingly and not in a routine manner.

27. In ***M/s.Pattnaik Industries (Pvt) Ltd. V. Kalinga Iron Works, 58 (1984) CLT 119,*** this Court held that it is not open to the parties by agreement to confer jurisdiction on a court which it does not possess under the C.P.C.; but where two courts or more have under the C.P.C. jurisdiction to try a suit or proceeding, an agreement between the parties that the dispute between them shall be tried in one of such courts, is not contrary to public policy and it does not contravene section 28 of the Contract Act, 1872.

28. Deciding whether a person is a workman or not, this Court in ***Dinesh Chandra Mishra v. Asst. Labour Commissioner, 59 (1985) CLT 31,*** held that while adjudging whether an employee came within the category of labour or management, one should not be carried away by the appellation or the glorified designation. What is germane was the nature of the duties assigned.

29. In ***Narayan Gosain v. The Collector, Cuttack, AIR 1986 Orissa 46***, this Court, deciding the locus standi of the general public in a litigation where long term lease of a tank, which was used by the people of the locality as a place of worship, was given for pisciculture, held that the people of the locality have locus standi to file the writ application challenging the lease in order to vindicate the public right of the people of the locality.

30. In ***The Oriental Fire and General Insurance Co. Ltd. v. Brajakishore Sahu, 61 (1986) CLT 394,*** this Court directed the State Govt. as well as the State Legal Aid and Advice Board, as it then was, to create a special cell in the Board for rendering legal services to the claimants of motor accidents cases more promptly and effectively, by which the claimants may not have to part with a sizeable amount towards litigation expenses. This Court thought over the plight of the poor litigants much before the Legal Services Authorities Act, 1987 came into force in the year 1996.

31. As a result of arbitrary rising of the height of the Bund of a reservoir, the area of the reservoir increased and private Royati lands belonging to the petitioners, who belonged to backward class, and others submerged. The

expanded reservoir devoured the petitioners' lands depriving of their livelihood. The petitioners had not only expressed their apprehension and anguish over the possible submerging of their lands in the expanded reservoir, but had also approached the District Collector after losing their lands after expansion. The District Collector called for a report from his subordinate. However, the hopes and aspirations of the petitioners to get compensation remained in the sphere of hopes and aspirations only. Even after the petitioners approached the Court by filing writ petition, the authorities remained callous and did not file counter affidavit for long four years. The inaction of the authorities to look into the grievance of the petitioners before filing of the writ petition as well as their lackadaisical attitude even after filing of the writ petition, led this Court in ***Bandaku Majhi v. State of Orissa, 83 (1997) CLT 264,*** to observe with anguish through Hon'ble Justice Dipak Misra that in a welfare State a citizen looks up to the authorities to get a fair deal. The State authorities have to function within the framework and parameters of law. They are not entitled to take law unto their own hands or to use it as a tool to harass a citizen. In a democratic set-up a State action has to be adjudged with the touchstone of fairness and non-arbitrariness. While answering the question as to whether giving water to some does it behove on the part of

a welfare State to deprive others of their lands, on which they depend to live, without making any alternative arrangement or paying compensation, in the affirmative, it was further held that life without livelihood is not the life in motion, it is an existence in stagnation; it is not spirit in ascendance but body denuded of its soul; not a progress in illumination but survival in indignity. The State cannot steal the livelihood of its citizens and crush the right to life enshrined under Article 21 of the Constitution. In the background of the aforesaid observations, the Court directed the District Collector, Bolangir, to verify the petitioners' claim and complete the final assessment of such claims within six months from the date of pronouncement of the judgment. Also the State was directed to pay cost of Rs.2,500/- to the petitioners.

32. In ***Divisional Manager, M/s.Oriental Insurance Co. Ltd. V. Subas Chandra Swain, 104 (2007) CLT 343,*** this Court while deciding an issue under the Workmen's Compensation Act, 1923, observed that while construing the provisions of the Act, which is a social welfare legislation, the Court has a duty to construe it in a manner which preserves the right of the workman belonging to a socially weaker section and to eschew an interpretation which takes away the benefit, provided the interpretation in

favour of the workman is reasonably possible in the facts and circumstances of the case. This is a landmark judgment in the field of ensuring effective social justice to the claimants of accidents “arising out of and in course of employment”.

33. With regard to exercise of judicial review in matters relating to industrial award, this Court in ***Paradip Port Trust v. General Secretary, Utkal Port & Dock Workers Union, 104 (2007) CLT 763,*** held that when a reference is made to an Industrial Tribunal, it has to be presumed that there is a genuine industrial dispute between the parties which requires to be resolved by adjudication. The Courts exercising judicial review should attempt to sustain the awards made by the Tribunal as far as possible instead of picking holes in the Award on trivial points, ultimately frustrating the entire adjudication process before the Tribunal by striking down awards on hyper-technical grounds. In other words, in exercise of its certiorari jurisdiction, Court can interfere with an award of the Tribunal if the same is patently perverse or is based on no evidence or the same is based on such conclusion as cannot be entertained by men of ordinary prudence. But the jurisdiction under Article 226 is not the same as that of adjudicatory authority which is vested in a Tribunal on a

reference under section 10 of the Industrial Disputes Act, 1947.

Orissa High Court has also rendered several judgments on criminal laws which will ever shine in the annals of judicial history.

34. In ***Ismail Khan v. State of Orissa, 16 CLT 209,*** this Court while declaring certain provisions of the Orissa Public Maintenance Order (Act 10 of 1950) ultra vires of the Constitution held that those provisions cannot be held to authorize imposition of “reasonable restrictions” on fundamental rights guaranteed under Article 19 (1) (d) and (e) of the Constitution.

35. In ***Harekrishna Mahatab v. Balakrishna Kar, 19 CLT 452,*** it was held that as Contempt of Court proceedings are summary and very arbitrary method of dealing with individuals; they should be sparingly initiated and a person should not be convicted unless his conviction is essential in the interests of justice. There must be a substantial contempt, that is, something which tends in a substantial manner to interfere with the course of justice.

36. In ***P. V. Jagannath Rao v. State of Orissa, 34 (1968) CLT 666,*** it was held that corruption, nepotism and misappropriation of public funds are definite matters of public importance. Public men failing in their duty should be called upon to face the consequences and it is a matter of public importance that lapse on the part of the Ministers should be exposed. The cleanliness in public life in which the public are vitally interested is a matter of public importance.

In recent days, much has been talked about transparency in the highest level of governance and in public life. But this aspect was thought of and taken care of in the aforesaid judgment as back as in the year 1968.

37. A Special Bench of this Court in ***Advocate-General, Orissa, v. Baradakanta Misra, 1974 Crl.L.J. 70,*** where the contemnor was a senior Judicial Officer of standing and was acquainted with the law of contempt insofar as he had personally conducted certain previous contempt cases against him made scandalizing allegations against the Judges of the High Court in a petition with which he had come prepared on the day of decision in the contempt proceedings for which instant contempt proceeding had been started with a view to intimidate the

Judges in the earlier proceedings, it was held that apology tendered by the contemnor in a memorandum at the last stage in the subsequent proceeding could not be accepted as bona fide.

In an earlier decision in ***Registrar of the Orissa High Court v. Baradakanta Misra, AIR 1973 Orissa 244,*** a Full Bench of the Court held that the High Court was entrusted with administration of justice, and in that connection to exercise control over the subordinate judiciary under Article 235 and power of superintendence over all courts and tribunals under Article 227. It was further held that a contemptuous disobedience of the order of the High Court must necessarily interfere with and obstruct the administration of justice, and amounts to contempt under Section 2 (c) (iii) of the Contempt of Courts Act, 1971. A senior Judicial Officer was held guilty of contempt of the Court and was sentenced to simple imprisonment for two months. The finding of the Court was ultimately affirmed by the apex Court but the apex Court having regard to the fact that the contemnor was a senior Judicial Officer, a lighter sentence of fine of Rs.1,000/- with three months' imprisonment in default of payment was awarded in substituting the infliction of imprisonment.

38. While deciding a question raised on the scope of detention beyond 60 days or 90 days on non-filing of charge-sheet and the applicability of section 167(2), Cr.P.C., Hon'ble Justice R. C. Patnaik, (as his Lordship then was), while rendering a judgment in ***Mangal Hemrum v. State of Orisa, 53 (1982) CLT 259,*** reminded : "Give me liberty or give me death" thundered Patrick Henry, more than two hundred years ago in the Virginia Convention. This eternal aspiration of the soul enshrined by the Founding Fathers in Article 21 of our Constitution – "No person shall be deprived of his life or personal liberty except according to the procedure established by law". Ultimately the Court finding that the charge-sheet was not filed within 90 days held that it was the duty of the Magistrate to ask the accused on the 91st day if they were prepared to go on bail and to furnish bail. The Magistrate infringed the constitutional and procedural mandate by deferring the application filed by the petitioners for consideration. Firstly, it was his duty to draw the attention of the accused that he had earned a right to be released on bail. The Magistgrate sems to have treated the liberty of a human being appearing before him as an accused very lightly and casually. The Magistrate, being an instrumentality in the administration of justice, should have visualized what feeling or impression, his act would have

generated in the mind of the accused in regard to justice and administration of justice.

39. Dealing with a case under the Probation of Offenders Act, 1958 in ***Saradhakar Sahu v. State of Orissa***, ***59 (1985) CLT 297,*** this Court in no uncertain term held that the object of bringing the Probation of Offenders Act is a statutory recognition of social justice and its object is to prevent conversion of youthful offenders into obdurate criminals as a result of their association with hardened criminals of mature age in case the youthful offenders are sentenced to undergo imprisonment in jail. The above object is in consonance with the present trend in the field of penology, according to which effort should be made to bring about correction and reformation of the individual offenders and not to resort to retributive justice. Modern criminal jurisprudence recognizes that no one is a born criminal and that a good many crimes are the product of socio-economic milieu. Although not much can be done for hardened criminals, considerable stress has been laid on bringing about reform of young offenders not guilty of very serious offences and of preventing their association with hardened criminals.

40. Interpreting the object and scope of section 197 of the Code of Criminal Procedure, 1973, this Court in ***Bishnu Prasad Mohapatra v. Ramesh Sahu, 60 (1985) CLT 164,*** held that section 197 is to guard against vexatious proceedings against public servants and to secure the well considered opinion of the superior authority before a prosecution is launched against them. In the first place, the policy of Legislature is to afford reasonable protection to public servants acting or purporting to act in the discharge of their duties and in the second place, this protection has certain limits and can only be claimed in the circumstances where the acts complained against and alleged to have been done by the public servants are reasonably connected with the discharge of their official duties and are not merely a cloak for doing the objectionable act. The circumstance that while so acting, the public servants acted in excess of their duty will not be a sufficient ground for deprivation of such protection so long as there is a reasonable connection between the impugned act and the performance of the official duties.

41. In ***Hadibandhu Mahalik v. State, 61 (1986) CLT 167,*** dealing with section 96 of the Penal Code, 1860 regarding plea of right of private defence, this Court held that a person who takes up the plea of right of private

defence must establish the same even on the prosecution evidence.

42. Deciding a case of conviction basing upon unsoundness of mind, this Court laid down the legal test for determination of criminality of an act. It was held in ***Shama Tudu v. State, 61 (1986) CLT 649,*** that if one is of unsound mind, the question required to be determined is as to whether he has established that the unsoundness of mind was of such a degree and nature to satisfy one of the tests laid down in section 84 of the Penal Code. In all cases where legal insanity is set up as a defence, it is very material to consider the circumstances which have preceded, attended and followed the crime, viz,, (i) whether there were deliberation and preparation for the act, (ii) whether it was done in a manner which showed a desire for concealment, (iii) whether, after the crime, the offender showed consciousness of guilt and made efforts to avoid detection and (iv) whether after his arrest, he offered false excuse or made false statement.

43. In ***Golakha Chandra Jena v. D.G. of Police, 74 (1992) CLT 259***, this Court dealt with a question of payment of compensation for the death of a person due to

police torturing and the Bench led by Hon'ble Hansaria, C.J. (as his Lordship then was) ruled that though the petitioner's son was stated to be a veteran dacoit being involved in a number of cases under section 395, I.P.C., even so, his life could not have been taken away by torturing him. Our Constitution and the laws do not permit it, according to which, even a culprit, howsoever notorious he may be, has to be dealt in accordance with law. Nobody's life can be taken away except in accordance with the procedure established by law. That is what Article 21 of the Constitution proclaims. So, it is a fit case where appropriate compensation should be awarded to the petitioner. This view of the Court was affirmed by the apex Court in ***Nilabati Behera v. State of Orissa, AIR 1993 SC 1960.***

44. While dealing with an application in the case of ***T. Bhagi Patra v. State of Orissa, reported in 81 (1996) CLT 435***, in which the order of the Magistrate taking cognizance of the offence under section 344 of the Cr.P.C. was challenged under section 482 of the Cr.P.C., Hon'ble Justice Dipak Misra examined the scope and ambit of the provision under section 344 laying down summary procedure for trial for giving false evidence. It was observed that the purpose of the provision is to create a restraint on the witness from stating falsehood in court. No witness

should foster the idea and nourish the hope that he can tender false evidence in a court of law and escape. In the temple of justice one is expected to speak the truth; i.e., the mandate of the law, command of ethicality and edict of conscience. The majesty of law condemns statements based on falsehood. On erroneous assumption, one may state with regard to a particular situation in his own individualistic manner, but deliberate and a conscious act of stating falsehood in a court of law is deplorable and reprehensible. At the same time a note of caution was also made by observing that while the purpose of the provision is to see that the witness conducts himself with propriety, simultaneously the witness is also not without protection. The Legislature casts a duty on the court to form an opinion and to record its satisfaction, which are the two pre-conditions before the prosecution under section 344, Cr.P.C. is launched.

45. In ***Bhaskar Nayak v. State of Orissa, 84 (1997) CLT 392,*** Hon'ble Justice A.Pasayat (now Judge of the Supreme Court), deciding a proceeding under section 482 Cr.P.C. where a prayer was made to quash the proceeding, held that speedy trial is one of the facets of Article 21 of the Constitution and though no rigidistic time-limit can be prescribed for completion of trial, there has to be some

amount of urgency involved and the cases involving alleged commission of petty offences should not be allowed to drag on indefinitely. In the words of his Lordship, cases involving petty offences should not travel through corridors of courts indefinitely and proceeding deserves a decent burial. His Lordship quashed the proceeding on the ground of delay in trial the alleged offences being petty in nature.

46. A Bench presided over by Hon'ble Acting Chief Justice A. Pasayat (as his Lordship then was) in ***Lokanath Mishra, etc. etc. v. State of Orissa, 88 (1999) CLT 399***, decided the proceedings initiated under the Contempt of Courts Act, 1971 against members/office bearers of certain organizations who held a press conference at Cuttack and made contemptuous statements against an Hon'ble Judge of the Court as well as the Editors and Publishers of certain newspapers who published the news in their newspapers. The Court held the contemnors guilty of contempt of the Court and even though they tendered unconditional and unqualified apologies, there was not even a remote or genuine apology for the statement/publications made by some of them. While holding the contemnors guilty of contempt of Court, they were directed to undergo simple imprisonment for one month and to pay a fine of Rs.5,000/- each. At the same

time, the Court granted opportunity to the contemnors to purge the contempt and observed that the same should not be misconstrued as if the Court had shown any liberal attitude towards them. The Court further proceeded to observe that it is often said that to forgive is noble and to forget is divine. Majesty of Law continues to hold its head high notwithstanding such scurrilous attacks made by persons who feel the law Courts will absorb anything and every thing, including attacks on their honesty, integrity and impartiality. While, therefore, sentencing the contemnors as indicated opportunity was granted to them to offer their genuine apologies, and show actual repentance for their conduct. For this purpose, they would to publish an unconditional apology in the concerned newspapers within one month clearly indicating there that they offer their unqualified apology.

47. In a proceeding under Articles 226 of the Constitution of India wherein allegation was made that the investigation made by the Investigating Officer in a case of murder was unfair and mala fide and the petitioner filed an application before the Judicial Magistrate of First Class, Purushottampur, to record his statement under section 164, Cr.P.C., this Court in a landmark judgment rendered in ***Jogendra Nahak v. State of Orissa, (1999) 16 OCR 312,*** held that the Investigating Officer or the prosecution cannot

be compelled to examine or include a particular person as witness and it was found that the petitioners did not file the writ application for securing fair justice but to play tricks so as to get their statements under section 161 and/or 164 of the Cr.P.C. recorded to help a charge-sheeted accused. The decision was challenged in appeal before the apex Court. The apex Court while confirming the decision of the High Court further added that a person claiming to be a witness cannot on his own motion approach a Magistrate requesting that his statement be recorded under section 164, Cr.P.C. and the Magistrate is not empowered to record statement of a stranger individual approaching him directly with a prayer that his statement may be recorded under section 164, Cr.P.C.

48. The question whether a direction can be issued for conducting DNA test and blood grouping test for determination of paternity of children, came up for consideration before the Division Bench consisting of Hon'ble Justice A. K. Patnaik (as his Lordship then was) and Hon'ble Justice M. M. Das in ***Thogorani @ K. Damayanti v. State of Orissa, 2004 (II) OLR 183 and*** Justice M.M. Das, authored the judgment. The aforesaid judgment took into consideration Articles 20(3) and 21 of the Constitution of India in resolving the question whether

such direction infringes the right to privacy culled out of the provisions of Article 21. This Court held that right was not absolute and may be lawfully restricted for prevention of crime, disorder or protection of health or morals or protection of rights and freedom of others. The Court laid down certain principles while passing the direction for DNA test. According to the judgment, the Court before passing direction for DNA test should balance the public interest vis-à-vis the rights under Articles 20(3) and 21 of the Constitution. In balancing interest, consideration of the following matters was felt relevant, namely, (i) the extent to which the accused may have participated in the commission of the crime; (ii) the gravity of the offence and the circumstances in which it is committed; (iii) age, physical and mental health of the accused to the extent they are known; (iv) whether there is less intrusive and practical way of collecting evidence tending to confirm or disprove the involvement of the accused in the crime; and (v) the reasons, if any, for the accused for refusing consent. Ultimately, it was held that the direction for conduct of DNA test would not in any way take away rights under Article 20 (3) of the Constitution.

Constitution and Statutes enacted by the Legislature are organic documents. By interpreting the words contained in the provisions, the Judiciary discharges the utmost function of evolution of law. In the process of interpretation and exposition of the constitutional and legal provisions, the Judiciary also contributes to the enactment of new laws. The role of Orissa High Court in discharging its function since the date of its inception has been very significant. This paper contains and refers to a few of the decisions from out of many, which have led to laying down new principles of law, rendering new interpretation of law and prescribing new procedural laws. Affirmation of the judgments by the apex Court has accorded recognition of the role played by the Orissa High Court in the development of Indian law. Whenever occasions arose, the High Court of Orissa has discharged its function to safeguard the rights and liberties of the citizens effectively by liberally interpreting the constitutional and legal provisions when it relates to social justice. It has also played a crucial role in ensuring good governance by the other two organs of the State. In doing so, the Orissa High Court has duly discharged the functions for which the Judiciary exists.

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