

A SATYA RANJAN MAJHI AND ANR.  
v.  
STATE OF ORISSA AND ORS.

AUGUST 25, 2003

B [V.N. KHARE CJ. AND S.B. SINHA, J.]

*Orissa Freedom of Religion Act, 1967/Orissa Freedom of Religion Rules, 1989:*

C *Ss.2 and 7/rr.4 and 5—Constitutional validity of—Held, the Act has been held to be a valid piece of legislation by this Court—As regards the rules, the judgment of the High Court does not show that question regarding vires of sub-rule (3) of rule 5 was specifically mooted—Merely because an inquiry is contemplated under r.5, it does not ipso facto make the rule*  
D *invalid—Furthermore, the question as to whether a rule is ultra vires or not must be adjudged having regard to public order in mind—Since no such contention was raised before the High Court, it cannot be permitted to be raised for the first time before Supreme Court—Constitution of India—Articles 136 and 226.*

E *\*Rev. Stainislaus v. State of Madhya Pradesh and Ors, AIR (1977) SC 908, relied on.*

*Constitution of India, 1950:*

F *Article 136—Fresh plea—Held: cannot be permitted to be raised for the first time before Supreme Court.*

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C) No 16428/03 CC 7122 of 2003.

G From the Judgment and Order dated 5.3.2003 of the Orissa High Court in O.J.C. No. 10530 of 2001.

WITH

I.A. No. 1 (C/delay in filing SLP)

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Janaranjan Das, Gaourang Biswal, Swetaketu Mishra, Ms. M. Gahlot and P.C. Chhinchani for the Petitioners. A

The following Order of the Court was delivered:

Delay Condoned.

By means of a petition under Article 226 of the Constitution, the petitioners challenged Sections 2 and 7 of the Orissa Freedom of Religion Act, 1967 (for short "the Act") and Rules 4 and 5 of the Orissa Freedom of Religion Rules, 1989 (for short "the Rules"). The petition was dismissed by the Orissa High Court. It is against the said order and judgment, the petitioners are before us by means of this special leave petition. B

It may be noted that this Act has been held to be a valid piece of legislation by this Court in *Rev. Stainislaus v. State of Madhya Pradesh and Ors.*, AIR (1977) SC 908 wherein it has been held as under : C

"19. We have no doubt that it is in this sense that the word 'propagate' has been used in Article 25 (1), for what the Article grants is not the right to convert another person to one's own religion, but to transmit or spread one's religion by an exposition of its tenets. It has to be remembered that Article 25 (1) guarantees "freedom of conscience" to every citizen, and not merely to the followers of one particular religion, and that, in turn, postulates that there is no fundamental right to convert another person to one's own religion because if a person purposely undertakes the conversion of another person to his religion, as distinguished from his effort to transmit or spread the tenets of religion, that would impinge on the "freedom of conscience" guaranteed to all the citizens of the country alike." D

Referring to Article 25 of the Constitution of India, it was observed that ". . . . What is freedom for one, is freedom for the other, in equal measure, and there can therefore, be no such thing as a fundamental right to convert any person to one's own religion." E

Learned counsel appearing for the petitioners, however, before us sought to assail sub-rule (3) of Rule 5 of the Rules which has been inserted by a Notification No. 63286 dated 26.11.1999. The impugned judgment does not show that the vires of the aforementioned provision was specifically mooted. Before the High Court, the principal argument advanced on behalf of the F

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- A petitioners was that the said Rules are *ultra vires* the rule-making power contained in Section 7 of the Act. The High Court has dealt with the matter in paragraph 5 of its judgment. We have also perused the written submissions filed by the petitioners before the High Court, but we do not find any specific ground questioning the said Rule other than mentioned hereinbefore was raised before the High Court. Furthermore, the question as to whether a rule is *ultra vires* or not, must be adjudged having regard to public order in mind. Had such a contention been raised, the State would have justified the making of the order, *inter alia*, on the ground of maintenance of public order. Such contention therefore, cannot be permitted to be raised for the first time before this Court.
- C Merely because an inquiry is contemplated under Rule 5, it does not *ipso facto* make the Rule invalid. We, therefore, do not find any merit in the special leave petition. It is, accordingly, dismissed.

R.P.

Petition dismissed.