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ORISSA HIGH COURT : CUTTACK

W.P.(C) No.36970 of 2025

In the matter of an Application under Article 226 of the
Constitution of India, 1950

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Kabita Patra
Aged about 52 years
W/o-Sudhansu Kumar Nayak
Green Enclave, Matha Sahi
Tulasipur, Cuttack – 753 008 ... Petitioner

-VERSUS-

- 1.** State of Odisha
Through
Chief Secretary
Secretariat
Bhubaneswar, Khordha
- 2.** Department of Parliamentary Affairs,
Through Principal Secretary,
Government of Odisha,
Bhubaneswar, Khordha.
- 3.** Speaker
Odisha Legislative Assembly
Odisha, Bhubaneswar, Khordha ... Opposite Parties

Counsel appeared for the parties:

For the Petitioner : M/s. Srinivas Mohanty,
Sujit Kumar Acharya and



Sushree Ranjan Mohanty,
Advocates

For the Opposite Parties : Mr. Pitambar Acharya,
Nos.1 and 2 Advocate General
Assisted by
Mr. Debashis Tripathy,
Additional Government Advocate
and
Ms. Aishwarya Dash,
Additional Standing Counsel

For the Opposite Parties : Mr. Prasanna Kumar Nanda,
No.3 Advocate

P R E S E N T:

**HONOURABLE CHIEF JUSTICE
MR. HARISH TANDON**

AND

**HONOURABLE JUSTICE
MR. MURAHARI SRI RAMAN**

Date of Hearing : 23.12.2025 :: Date of Judgment :23.12.2025

JUDGMENT

HARISH TANDON, C.J.—

The petitioner claiming to be a public spirited person has filed the instant Public Interest Litigation (PIL) assailing the Odisha Legislative Assembly Members' Salary, Allowances and Pension (Amendment) Bill, 2025 (for short, "Bill")



to be declared as unconstitutional and opposed to the faith of the citizenry of the State.

- 2.** Mr. Pitambar Acharya, learned Advocate General, ably assisted by Mr. Debashis Tripathy, learned Additional Government Advocate and Ms. Aishwarya Dash, learned Additional Standing Counsel, raises a plea of demur on the entertainability of the writ petition challenging the Bill, 2025 which has not been converted into a legislation/law as it has not yet been assented to by the Governor/President.
- 3.** The Bill, 2025 was placed on the floor of the Assembly by the Government with an avowed object of enhancing the salary, allowances and pension of the Legislative Members which has not taken a shape of an Act, as the consent of the Governor or the President, as the case may be, has not been granted as yet. A preliminary objection is taken on the maintainability of the writ petition in the nature of a Public Interest Litigation that it is outside the purview of the writ jurisdiction to entertain any cause concerning the Bill which has not taken a shape of an Act. The functioning of the Assembly or the Parliament is well defined in the Constitutional provisions and the importance of placing the Bill on the floor of the House has been



a concern when the challenge is made at such stage before the Constitutional Court. In a contemporaneous period of time after the Constitution of India was adopted and came into force on 26th January, 1950, the writ petition was filed before the Allahabad High Court challenging a Bill and a plea of demur was taken on the entertainability thereof.

3.1. The Division Bench of the Allahabad High Court in *Chhotey Lal Vrs. The State of Uttar Pradesh* reported in 1951 ILR (2) Allahabad 505 eloquently dealt with the nuances of separation of powers and the entertainability of the writ petition at the stage of a Bill, which had not partake the character of an Act in absence of an assent to be granted by the Governor in the following:

“No authority is needed for the proposition that the State Legislature is a sovereign legislature within the limits assigned to it by the Constitution which was enacted by the Constituent Assembly of the people of India. Article 194 of the Constitution deals with the powers and privileges and immunities of the Legislature. From a perusal of its sub-article 3 it is clear that the powers, privileges and immunities of the Legislature until so determined otherwise and subject to the other provisions of Article 194 shall be those of the House of Commons of the United Kingdom and of its members and committees. Article 168(1) makes it clear that the



Legislature shall consist of the Governor and of both the Houses of the Legislature so far as this State is concerned. In assigning to the Governor a place which makes him a component part of the Legislature the framers of the Indian Constitution have accepted the British principle. It is thus clear that the legislative process is not complete so far as this Bill is concerned. It is still on the legislative anvil.

It is necessary to understand exactly how and in what circumstances courts declare laws invalid or unconstitutional. Until a Bill has become law, the legislative process not being complete, courts do not come into the picture at all. It is not the function of any court or judge to declare void or directly annul a law the moment it has been promulgated. Courts are not a supervisory body over the Legislature. Their approval or disapproval is not needed for an Act passed by the Legislature to have the force of law. Their function is interpretative. In other words, upon any particular case coming before them in which the right of any party is involved they decide whether the Act or any part of it is to be disregarded on the ground of its incompatibility with the Constitution.”

3.2. What can be culled out from the celebrated observations made in the said report that the Bill is the first step in the Legislative fiat in pursuit of shaping it into a full-fledged legislation after the said Bill is passed with majority and the assent is granted by the Governor or the President.



3.3. The law as defined in the Constitutional provisions is the legislation which has been put in place after passing through the muster of all the procedures provided therefor. Mere introduction of the Bill or placing the same on the floor of the House for further discussion at the nebulous stage, cannot be characterized as the legislation or the law unless it has taken a shape of the Act after receiving the consent and/or approval of the Governor.

3.4. The Constitution Bench comprising of five Judges in *Special Reference No.1 of 2025 (Assent, Withholding or Reservation of Bills by the Governor and the President of India)*, 2025 SCC OnLine SC 2501 reiterated the principles governing the field of interference by the writ Court assailing the Bill that the word “law” appearing in Articles 13, 245 and 246 of the Constitution has to be understood in the perspective of the legislation which can only be enacted upon adhering to the provisions of the Constitution.

3.5. Introduction of the Bill, 2025 is not an empty formality but conveys the Legislative Will or the intention of the makers of the law what they intended to enact and it would be complete by assent of the Governor or the President. Mere



Legislative Will in pursuit of an enactment is not amenable to be assailed before the writ Court as it does not fulfil the definition of law or the legislation perceived in the provisions of the Constitution of India.

3.6. The enlightening observations made in the said Constitution Bench decision would aptly convey, the nuances of law in this regard, in paragraph 144 which reads thus:-

“Therefore, the judicial review of a Bill, that is anterior to its enactment as law, is unheard of and unfathomable in our constitutional practice and history. Judicial review of a legislation is premised on the fact that it will be considered by the Court, only after it has been made into law-i.e., assented by the Governor or President as the case may be, and brought into force. It is this judicial review over legislation that our constitutionalism envisages, and this particular form is an essential feature of our basic structure.”

3.7. The meaningful reading of the law declared by the Constitution Bench of the Supreme Court of India leaves no ambiguity that the writ Court should refrain from entertaining the writ petition at the stage of a Bill, unless it is converted into an Act after undergoing the process and/or procedures provided in the Constitution of India. It is still at the rudimentary stage not affecting the rights of a



person or the citizens, unless the same is transformed into a full fledges legislation.

4. In view of the above discussions and the legal position as enunciated by the Courts, we had no alternative but to dismiss the writ petition on such score.
5. The writ petition is, thus, dismissed. No costs.

(HARISH TANDON)
CHIEF JUSTICE

(MURAHARI SRI RAMAN)
JUDGE