



**AFR**

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.A No.1962 of 2025**

In the matter of an appeal under Section-10 of the Letters Patent of Patna High Court read with Article-4 the Orissa High Court Rules, 1948 from a common order dated 05.12.2025 passed by the Single Judge in W.P.(C) Nos. 31617 & 32188 of 2024.

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*Maheswar Jena* .... *Appellant*  
-versus-

*Madhusudan Dalai & Others* .... *Respondents*

**Advocates Appeared in this case**

*For Appellant* - M/s. Pratik Nayak, B. Mishra, A. Mishra & P. Patnaik, Advocates

*For Respondents* - M/s. Millon Kumar, A. Khandelwal & P. Khandelwal, Advocates [R-1]

Smt. Suman Pattanayak,  
Addl. Govt. Advocate  
[R-2 to 4]

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**CORAM :**

**MR. JUSTICE DIXIT KRISHNA SHRI PAD**

**MR. JUSTICE CHITTARANJAN DASH**

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Date of Hearing & Judgment : 15.01.2026

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**PER KRISHNA S. DIXIT, J.**

Appellant's membership of Grama Panchayat having been terminated on the ground of disqualification because of having more than two children,



as provided under Section 25(1)(v) of the Odisha Grama Panchayats Act, 1964, is in question and his challenge to the same having been negatived, this intra-court Appeal is presented against a learned Single Judge's order dated 05.12.2025, whereby his WP(C) Nos.31617 & 32188 of 2024 have been dismissed.

**2.** Learned counsel for the Appellant vehemently argues that his client is entitled to protection under the Proviso to Clause (v) of Sub-Section (1) of Section 25 of the 1964 Act and this aspect having not been duly considered, there is error apparent on the face of the record warranting interference of this Court. Learned AGA appearing for the State and learned Advocates appearing for the private parties on caveat vociferously resist the appeal making submissions in justification of the impugned order and the reasons on which they have been constructed.

**3.** Having heard learned counsel for the parties and having perused the appeal papers, this Court declines indulgence in the matter broadly agreeing with the view of learned Single Judge and also for the following reasons:

**3.1. AS TO THE SCOPE OF PROTECTIVE PROVISO TO SECTION 25(1)(V) OF THE ACT:**

**3.1.1.** Learned counsel for the Appellant strenuously argues that although his client begot the 3<sup>rd</sup> child on 11.03.1993 and 4<sup>th</sup> on 06.11.1994, he enjoys protection under the Proviso to Clause (v) of Sub-Section (1) of Section 25



of the 1964 Act. Let us examine this aspect of the matter. Sub-Section (1) of Section 25 enlists as many as 23 circumstances, each one of them being a ground for disqualification from being elected or nominated as a Sarpanch or any other member of Grama Panchayat. Relevant to our discussion is Clause (v) of Sub-Section (1) of Section 25, of course, the Proviso to the Clause being inclusive. The same has following text:

***"25. Disqualification for membership of Grama Panchayat-(1) A person shall be disqualified for being elected or nominated as, a Sarpanch or any other member of the Grama Panchayat constituted under this Act, if he-***

xx

xx

xx

*(v) has more than two children:*

xx

xx

xx

*"Provided that the disqualification under Clause (v) shall not apply to any person who has more than two Children on the date of commencement of the Orissa Grama Panchayats (Amendment) Act, 1994 or, as the case may be, within a period of one year of such commencement, unless he begets an additional child after the said period of one year..."*

**3.1.2.** The Constitution (Forty-Second Amendment) Act, 1976 introduced Entry-20A 'Population Control & Family Planning' to the Concurrent List in the Seventh Schedule with effect from 03.01.1977. This introduction is not without significance. It was made in the wake of rapidly growing population in the country so that Center & States can devise policies to control the growth rate. The Proviso to Clause (v) to Sub-Section (1) of Section 25 of the Act is one small measure in that direction. It came to be introduced by way of Amendment w.e.f. 18.04.1994, as on which date the Appellant had the 3<sup>rd</sup> child born (11.03.1993) and the 4<sup>th</sup> (06.11.1994). The Panchayat elections were admittedly held in the year 2022. Thus, the said



Proviso was already in force since the preceding 18 years or so. Thus, the case of Appellant is one of Text Book for attracting the disqualification clause, the protective Proviso remaining miles away. The finding recorded by the learned Single Judge and by the Court below, in this regard, is thus unassailable.

### **3.2. A FRAGMENT ON THE LAUDABLE POLICY OF FAMILY PLANNING & ITS DIRE NEED:**

**3.2.1.** Section 25(1)(v) of the Act enacts a State Policy of diminishing the exponential population growth. Sir Winston Churchill (1874-1965) is said to have said "*India is not a nation, but mere population*". This was long before the Partition, when the then population of undivided India was about 30 Crores or so. What caustic comment he would have made, had he been alive today, will drive one to wild imagination. The Punjab & Haryana High Court in *Fazru v. State of Haryana*<sup>1</sup>, while repelling challenge to the validity of similar provision observed as under:

*"16. It is observed that the Government is spending huge amount in propagating Family Planning. In the recent years, the growth of population in the country is alarming. The Government in order to check the same has introduced various Projects to Implement the Family Planning which have been entrusted to various agencies one of which is Gram Panchayat. It is expected from the Panches and Sarpanches to set good examples and they are supposed to maintain norm of two children. If they themselves violate the same, what examples they can set before the public. The population can be checked by adopting the Family Planning Measures. If the same are not adopted, then the Nature takes its own turn i.e. people die by natural calamities. In the case in hand, the State Government has put a condition that he who violates Section... will be disqualified. Right to contest election is not a fundamental right. The petitioner was aware of Section... and he has not intentionally complied with the Rules and Regulations. We are not oblivious of the fact that Nation's interest is supreme. Growing population is the greatest problem which the country is facing. It will not only be desirable but absolutely essential for every*

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<sup>1</sup> AIR 1998 P&H 133.



*country to see that the Family Planning Programme is maintained at sufficient levels so as to meet the danger of over-population which, if not controlled, may lead to serious social and economic problems throughout the country. No enactment which promotes social and economic justice can be held to be ultra vires. No doubt, every citizen has a right to live with human dignity. But, how one can expect citizens of this country to live with human dignity and social equality when the population goes on increasing by leaps and bounds. If the existing rate of growth of population is allowed to continue it is bound to take the country to a dangerous stage where persons may die of hunger and may not have a roof over their heads to live."*

**3.2.2.** The United Nations Population Fund (UNFPA) India Policy, for the year 2023-2027 enlists four States, namely, Bihar, Madhya Pradesh, Rajasthan & Odisha as priority provinces for addressing population growth rate. It mentions that population of Odisha is 3.32% of nation's population, and it is a vibrant mix of traditions, languages & communities<sup>2</sup>. According to UN World Health Organization, Health Data Overview 2023, India's population was about 1.43 billion. Obviously, now it has crossed that figure. It is projected to increase to 1.7 billion by 2050, the growth rate being 17% for the period<sup>3</sup>, if not Malthusian Thumb Rule of 100% hike once in 25 years. This is alarming, to say the least. It was Bertrand Russell (1872-1970), a British Philosopher & Nobel Awardee (1950), who measuredly said "Population explosion is more dangerous than hydrogen bomb".

**3.2.3.** The policy makers, more particularly the Political Executives, do not appear to have duly adverted to the warning of Thomas Robert Malthus (1766-1834) administered in his poignant write up "An Essay on the Principle of Population" published in 1798. It is relevant to extract his view:

<sup>2</sup> . UNFPA in India, Country Programme – 10 (2023-2027)

<sup>3</sup> . WHO Data, Health data overview for the Republic of India.



*"...The ratio of increase, though short of utmost power of the population, yet as the result of actual experience, we will take as our rule, and say, that population, when unchecked, goes on doubling itself every twenty-five years or increases in a geometrical ratio..."*

The UNFPA in its report on Population Projection has said as under:

*"It took hundreds of thousands of years for the world population to grow to one billion- then in just in another two hundred years or so, it grew sevenfold. In 2011, it reached eight billion. This dramatic growth has been driven largely by increasing numbers of people surviving to reproductive age, and has been accompanied by major changes in fertility rates, Increasing urbanization and large-scale migration. These trends will have far-reaching implications for generations to come..."<sup>4</sup>*

The gigantic population of the Country, it is obvious, is coming in the way of implementation of several socio-welfare schemes. Memory has not faded about the difficulties which people of the Country faced during Covid-19 pandemic because of space constraint when they were asked to maintain safe distance. The value & dignity of individuals, even in any civilized jurisdiction, which our Constitution and the Courts so jealously seek to cherish & protect, would diminish in their content as against the increase in population. This needs no research for affirmation. It is high time that 'powers that be' turn the pages of this Essay before the 'population explosion' happens in the Country.

**3.2.4.** A collegium of 11000 World Scientists' Warning *inter alia* as to population growth & its ill effects is pertinent to reproduce:-

*"...profoundly troubling signs from human activities include sustained Increases in both human and ruminant livestock populations, per capita meat production, world gross domestic product, global tree cover loss,*

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<sup>4</sup> . UNFPA, World population trends, Megatrends.



*fossil fuel consumption, the number of air passengers carried, carbon dioxide (CO<sub>2</sub>) emissions...<sup>5</sup>*

The UN Secretary-General Javier Perez de Cuellar expressed concern as to over growing population as a global phenomenon in the following words:-

*“If rapid population growth in the developing nations is left unchecked, it will evidently undermine all efforts for economic and social development and could easily lead to widespread depletion of each nation’s resources.”*

Human overpopulation in the globe is a major driver of biodiversity loss & proves to be a key obstacle to fairly sharing habitat and essential resources with other species. Failure to address the root causes of biodiversity loss, one of them being rapid growth of population will doom conservationists' efforts.

4. Overpopulation which is a complex and multifaceted issue presents a mammoth challenge to the delicate balance of our only planet and its limited resources, the unchecked population growth places immense strain on environmental, societal and economic systems. There is almost a global unanimity of opinion that overpopulation causes environmental degradation, resource scarcity and intensified societal challenges. It is not in the domain of Court to enlist all other disastrous consequences of rapid population growth in general and the demographic changes associated with such growth, in particular. People are degrading ecosystems so thoroughly that future generations likely will have a hard time living decent lives. *More is not necessary to specify and less is insufficient to leave it unsaid.*

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<sup>5</sup> . William J. Ripple, Christopher Wolf, Thomas M. Newsome, Phoebe Barnard, William R. Moomaw, and 11,258 scientist signatories from 153 countries World Scientists' Warning of a Climate Emergency, available at: Bioscience by Oxford University Presses, published: 5<sup>th</sup> Nov. 2019.



5. We have made the above observations to express our deep concern as to the imminent population explosion, and to stress the dire need for devising appropriate policies on war footing to halt the same. It is appreciable that the Parliament decades ago sensed the danger and brought about the Forty-Second Amendment to the Constitution introducing Entry-20A to the Concurrent List as already mentioned above. This was to enable the promulgation of policy, legislative or otherwise. However, we are constrained to observe that the measures hitherto taken to retard population growth rate, are far from satisfactory. It is high time that the Constitutional Institutions and the Civil Society do something in the matter. Lord Byron (1788-1824) in his poem 'Childe Harold's Pilgrimage' prophetically says:

*"A thousand years scarce serve to form a State; an hour may lay it in the dust."*

In the above circumstances, this Appeal being devoid of merits is liable to dismissed and accordingly it is, costs having been made easy.

We place on record our deep appreciation for the able research and assistance rendered by Law Clerk-cum-Research Assistant-Mr. Mohammed Nihad Sharief.

Registry to send a copy of this judgment to the Hon'ble Chairman, Law Commission of India, New Delhi.

*(Dixit Krishna Shripad)*  
*Judge*

*(Chittaranjan Dash)*  
*Judge*

**Signature Not Verified**  
  
 Orissa High Court, Bhubaneswar  
 Digitally Signed on 15th Jan 2026 by A.K. Pradhan  
 Signed by: ANAND KUMAR PRADHAN / A.K. Pradhan  
 Designation: Senior Stenographer  
 Reason: Authentication  
 Location: HIGH COURT OF ORISSA  
 Date: 20-Jan-2026 16:30:18