

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.18823 of 2016

Smt. Susama Panigrahi

.... Petitioner

Mr. P.K. Rath, Advocate

-versus-

State of Odisha and others

.... Opposite Parties

Mr. Debakanta Mohanty, A.G.A. for the State

CORAM:

THE CHIEF JUSTICE

JUSTICE M.S. RAMAN

Order No.

ORDER
07.12.2022

06. 1. On 2nd November 2016, while directing notice to issue in the present petition, the following order was passed by this Court in Misc. Case No.17416 of 2016:

“Heard.

It is brought to our notice that based on a complaint lodged against the operation of the petitioners O.S. shop, enquiry was conducted by the R.I., Kodala, Ganjam, the Tahasildar, Kodala, Ganjam, the Deputy Superintendent of Excise, Chatrapur, Ganjam as well as the Collector, Ganjam and views of all the authorities were intimated by the Collector, Ganjam to the Additional Secretary to Government, Excise Department, Odisha, Bhubaneswar under letter No.1817/Ex. Dated 12.08.2016. The relevant portion of which is quoted hereunder:

“Besides, Khata No.833 is recorded in the name of Sri Barala Balunkeswar Swami, whereas the Plot No.5092 is not recorded within the Khata No.833. Moreover, the present Main OS Shop, Kodala functioning over plot No.5288 under Khata No.1520/475 of mouza

Kodala (RoR enclosed) is also not coming within the Khata No.833.

The report of Tahasildar, Kodala & Dy. Supdt. of Excise, Ganjam along with trace map of R.I. Kodala is enclosed herewith for your kind perusal.”

It is indeed surprising to note that under Annexure-1 dated 07.10.2016 the Government of Odisha in the Excise Department with reference to the very selfsame letter of the Collector, Ganjam has directed closure of the shop. It clearly prima facie indicates non-application of mind to the communication of all the authorities, who have inspected and submitted the factual report to the State.

Accordingly, as an interim measure, it is directed that the operation of the letter dated 07.10.2016 under Annexure-1 shall remain in abeyance till the next date.

Free copy of this order be handed over to the learned counsel for the State for necessary communication.

Urgent certified copy of this order be granted on proper application.”

2. In the counter affidavit filed by the Opposite Parties, the above fact is confirmed. However, the closure of the shop was still justified on the ground of local objection.

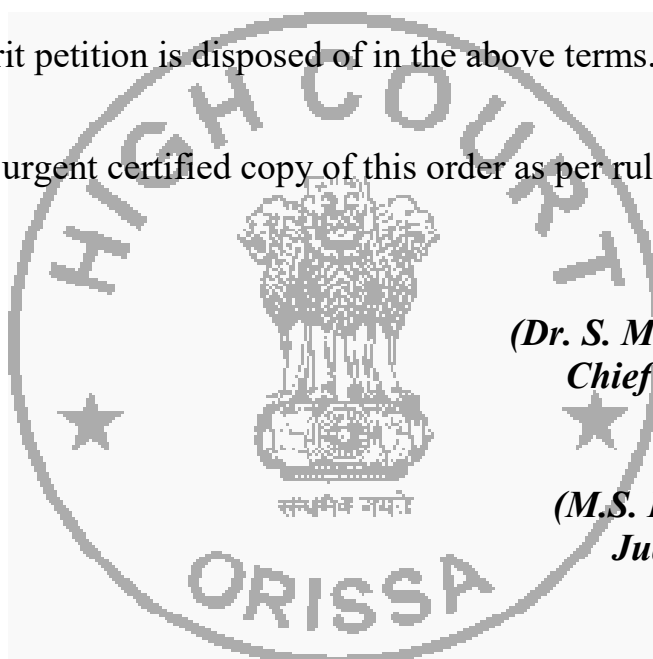
3. Nevertheless, it transpires that during the pendency of the present petition, the Collector by an order dated 30th November 2016 allowed the opening of the shop on 2nd December, 2016. The shop has been operational since then.

4. In view of the above development, the original order passed by the Excise Department on 7th October 2016 is no longer legally sustainable and is hereby set aside.

5. As regards the demand during the closure period, it will be open to the Petitioner to approach the Excise Commissioner with an appropriate application for exemption, not later than four weeks from today, which will be considered in accordance with law and an appropriate order will be passed thereon within four weeks of making such application. Till such time the Excise Commissioner decides the above application of the Petitioner, the demand which has been stayed by this Court by an order dated 30th March, 2017 will continue to remain in abeyance.

6. The writ petition is disposed of in the above terms.

7. Issue urgent certified copy of this order as per rules.



(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

S.K. Guin