

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.1226 of 2012

Debendra Sahoo

....

Petitioner

Mr. L. Kanungo, Advocate

-versus-

State of Odisha and others

....

Opposite Parties

Mr. Debakanta Mohanty, A.G.A.

**CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAİK**

**ORDER
19.07.2022**

Order No.

05.

1. The Petitioner is aggrieved by a demand notice dated 19th October 2011 issued by the Sub-Inspector of Excise, Bhubaneswar Charge-I, District-Khurda asking him to deposit Rs.10,54,488/- on account of excise duty on IMFL/Beer MGQ and monthly consideration money in respect of his IMFL Off Shop at Anantapur, PS-Balianta, District-Khurda for the period April to July, 2011.
2. The ground on which the demand has been resisted is that the concerned IMFL Off shop came to be sealed on 22nd May 2010 by virtue of an order passed by this Court in W.P.(C) No.8037 of 2010. But, since there was no particular direction in the said order that the Petitioner's shop, which was operating in Trinath Bazar, to be closed, another writ petition being W.P.(C) No.10448 of 2010 (*Bimala Parija v. State of Orissa*) was filed in this Court.

3. By an order dated 11th June 2010, this Court directed that the shop would not be opened if not already opened at Trinath Bazar by that date. Subsequently, after disposal of W.P.(C) No.8037 of 2010, W.P.(C) No.10448 of 2010 was also disposed of by this Court on 7th December 2010 with the observation that the present Petitioner had been granted the privilege licence for running the said Off shop and that since no liquor was consumed in the premises of the said Off shop, the restrictions imposed under Rule 34 of the Orissa Excise Rules, 1965 had no application.

4. Pursuant to the above order, the Petitioner was stated to have filed a representation with Opposite Party Nos.4 and 5 i.e., the Superintendent of Excise, Khurda and Sub-Inspector of Excise, Bhubaneswar for reopening of the shop. But, such representation was not acted upon. Ultimately, the Petitioner reopened his shop in the Trinath Bazar area on 26th January, 2011. Thus, it is pointed out that between 22nd May 2010 and 25th January 2011, the Petitioner's shop had been closed. It is stated that a formal renewal of the Petitioner's license was granted only on 29th April 2011, and even then, there was orally directed to relocate his shop within the Anantapur Mouza. It is stated that with much difficulty, he selected an unobjectionable site there and filed an application on 21st May, 2011. It was only on 2nd August 2011 that the renewal order was corrected from Trinath Bazar to Anantapur and a license was delivered to the Petitioner.

5. Accordingly, the Petitioner has averred that during the entire period up to the point of renewal of license for operating from

Ananatapur, the Petitioner was unable to operate the shop at Trinath Bazaar. In other words, it remained closed from 1st April 2011 to 2nd August 2011 on account of the belated decision taken by the Excise Superintendent. In the circumstances, the impugned demand notice demanding MGQ for the period from April to July 2011 was not justified, according to the Petitioner.

6. In para-10 of the counter affidavit filed, it is sought to be contended that the period for which the demand has been raised i.e., April to July 2011 “was not covered by the stay order” of this Court. However, it is pointed out by the Petitioner that by a letter dated 21st April 2011, the Petitioner was asked to submit his application for renewal through the concerned Excise Officer quoting the directions issued by this Court on 29th March 2011 in Misc. Case No.4638 of 2011 arising out of W.P.(C) No.7049 of 2011. This application was allowed only on 2nd August, 2011.

7. Clearly, therefore, the Petitioner could not have continued operating at Trinath Bazar during this period. The licence for him to operate the IMFL Off shop from the changed location at Anantapur having been issued only on 2nd August 2011 and the Petitioner’s shop having been closed till then on account of the above factors, the Court is of the view that the demand notice dated 19th October 2011 is unsustainable in law.

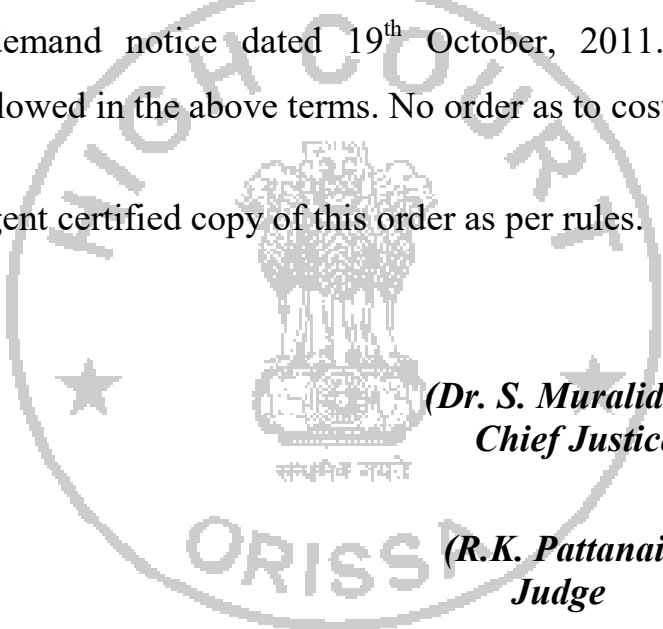
8. The Court notes that in similar circumstances, this Court had passed an order on 14th September 1993 in OJC No.6662 of 1992 (*Sarat Kumar Rath v. State of Odisha*) holding that a demand

raised for MGQ shortfall for a period during which an IMFL shop is sought for reasons beyond the control of licence holder, cannot be sustained in law.

9. To the same effect are the orders dated 10th May 2011 of this Court in W.P.(C) No.8433 of 2011 (*Smt. Sakuntala Sahu v. State of Orissa*) and the order dated 1st May 2015 in W.P.(C) No.6132 of 2014 (*Golaka Behari Pattnaik v. State of Odisha*).

10. For all of the aforementioned reasons, this Court quashes the impugned demand notice dated 19th October, 2011. The writ petition is allowed in the above terms. No order as to costs.

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

The seal of the Orissa High Court is a circular emblem. It features the State Emblem of India at the top center, which is a four-lion capital of an abacus. Below the emblem is the motto 'सत्यमेव जयते' in Devanagari script. The words 'HIGH COURT' are written in an arc at the top, and 'ORISSA' is written in an arc at the bottom. Two five-pointed stars are positioned on the left and right sides of the emblem.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Guin