

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P (C) No. 7857 of 2022

Nityananda Mohanty & Others

....

Petitioners

Mr. Prafulla Kumar Rath, Advocate

-versus-

State of Odisha & Others

....

Opposite Parties

Mr. L. Samantaray, AGA

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN

ORDER
16.05.2022

Order No.

- 03.**
- 1.** This matter is taken up by virtual/physical mode.
 - 2.** The Petitioners (five licensees of C.L shops) have come up before this Court by way of the present petition invoking the Article 226 of the Constitution of India seeking relaxation up to 10% of Minimum Guaranteed Quantity (MGQ) in respect of Country Liquor Shop (CS/CL Shop) by considering Clause 4.1.1 of Excise Policy, 2021-22. The Petitioner has made the following prayer in the writ petition.

“The Petitioners, therefore, pray that your Lordships would be graciously pleased to admit this Writ Petition, call for the records and after hearing the parties allow the same, issue writ/writs in the nature of certiorari/mandamus and/or any other further writ/direction and direct the Opposite Party No.2 to consider the case of the Petitioners in the light of representations given and allow relaxation of 10% of MGQ in respect of the Country Liquor Shops, within a stipulated period”

3. By furnishing material particulars in their representations *vide* Annexure-3 series to the Excise Commissioner, essentially the Petitioners submitted that during the period 2021-22 on many occasions, the shops either remained closed or opened for particular duration with restrictions clamped by the State administration on account of shut down/lock down due to spread of Covid-19 virus for which they could not lift required MGQ. It is also brought to the notice of the Commissioner concerned in the said representations that a committee formed under the Excise Commissioner was required to consider the MGQ related issues faced by licensees and accordingly it was suggested to relax up to 10% of shortfall of lifting of MGQ on the recommendation of said committee in terms of Clause 4.1.1 of Excise Policy in the year 2021-22.

4. This Court *vide* order dated 4th April, 2022 while issuing notice has passed the following order.

“2. The prayer is for consideration for waiver of relaxing the demand upto 10% of short-lifting of MGQ on account of difficulties for the excise year, 2021-22 in terms of Clause-4.1.1. of the Excise Policy (Excise fee, Duty and margin structure along with Regulatory Guidelines) for the year, 2021-22.

3. Issue notice for 5th May, 2022.

4. Mr. L. Samantaray, Additional Government Advocate appears and waives notice on behalf of the Opposite Parties. Six extra copies of the writ petition be served on him within three working days.”

5. Pursuant to the aforesaid order, counter affidavit dated 5th May, 2022 has been filed on behalf of the Opposite Party Nos. 1, 2,

3 & 5 and another counter affidavit dated 29th April, 2022 on behalf of Opposite Party Nos.4 & 6 has come to be filed.

6. Paragraph-7 of the counter affidavit dated 5th May, 2022 reads as follows:-

“That in reply to the averments made in Para-7, it is submitted that keeping in view to the COVID Crisis, closure of Liquor shops and reduction of operational timing, the Govt in Excise Dept. in their order No.1422/EX., Dt. 13.03.2021 made provision for relaxation up to 10% of MGQ through a Committee with power conferred on the Excise Commissioner to look into the genuine MGQ grievances of the licensee.”

7. Paragraph-7 of counter affidavit dated 29th April, 2022 reads as follows:-

“That in reply to the averments made in Para 10& 1, it is submitted that during Covid-19 period the instruction of Govt,. issued from time to time has been communicated to the licensees, regarding opening and closing of Excise Shop. The Petitioner Sri Bikram Kumar Sahoo filed representation which was received on 24th February, 2022 and was sent to Excise Commissioner, Odisha, Cuttack vide letter No.534/Ex. Dt.03.03.2022 copy of the same is enclosed here with. In this context it is submitted that the M.G.Q. of C.L. shop at Balikhand is 25245 cases in L.P.L/B.L out of which he has lifted by the end of 2021-22, 25245 cases in L.P.L./B.L. and there is no shortfall of in the concerned OSBC figure.”

8. Perusal of Annexure-C/5 enclosed to counter affidavit dated 5th May, 2022 reveals that on consideration of representations from the licensees of Excise Shops vide Order bearing No.1432-PTI-EXC-POL-POL-0109-2020/Ex., dated 29th March, 2022, the Government of Odisha in Excise Department have brought out certain solution. The text of said order is extracted herein below:-

“A number of representations have been received from retail licensees of excise shops regarding difficulty faced by them in the meeting the MGQ quota for the year 2021-22 due to disruption in sale owing to second wave of Covid-19. They have requested for providing appropriate relief for smooth continuation of their retail shops.

Considering the fact that Covid situation has now normalized and liquor sales have been witnessing good growth in the recent months which is expected to continue in the coming financial year also, Government after careful consideration has been pleased to allow all FL ‘Off’ /Fl ‘ON’ and CL (ENA based) licensees to lift the short drawn quantity of the individual MGQ for the year 2021-22 in the coming financial year 2022-23, in addition to the normal MGQ of 2022-23.

Consequently, Collectors are advised to fix the MGQ of the individual licensee for the year 2022-23 taking into account the MGQ prescribed for the licensee as per the Excise Policy of 2022-23 along with the Short drawn MGQ quota of the year 2-21-22, if any.”

9. At the time of hearing Mr. Prafulla Kumar Rath, counsel for the Petitioners submitted that the grievance of the Petitioners as mentioned in the writ petition has been sorted out particularly in view of Order dated 29th March, 2022 to the effect that relaxation has been allowed all FL ‘Off’ /Fl ‘ON’ and CL (ENA based) licensees to lift the short drawn quantity of the individual MGQ for the year 2021-22 in the financial year 2022-23, in addition to the normal MGQ of 2022-23. The writ petition is, therefore, required to be allowed in terms of the counter affidavit filed by the Opposite Parties. Mr. L. Samantaray, Additional Government Advocate assisted by Mr. Anupam Rath, Additional Standing Counsel for the Opposite Parties conceded to the position as stated above.

10. In view such conceded position, the writ petition is disposed of in terms of admission as made at Paragraph 7 of the counter affidavit dated 5th May, 2022 (extracted herein above) read with Order dated 29th March, 2022.

(Jaswant Singh)
Judge

(M.S. Raman)
Judge

Laxmikant

May 16, 2022
Cuttack

