IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.13977 of 2022

Lopamudra Nayak .... *Petitioner*

Mr. Ajit Kumar Kanungo, Advocate

-versus-

State of Odisha and Others .... *Opposite Parties*

Mr. L. Samantaray, AGA

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M. S. RAMAN

ORDER
11.07.2022

Order No.

01. **1.** This matter is taken up by virtual/physical mode.

2. The petitioner vide this writ petition has assailed the order dated 28.10.2021 passed by Excise Commissioner and also the Revision Case No.14 of 2021 dated 19.02.2022 arising out of order dated 28.10.2021 passed by the Principal Secretary to the Government of Odisha.

3. The brief facts of the case are that the petitioner i.e. Lopamudra Nayak is a licence holder of IMFL OFF shop in Saheed Nagar, ward No.30 of Bhubaneswar Municipal Corporation (BMC) and operating over plot no. C/3, Market Building, Saheed Nagar, Bhubaneswar, Khordha. The dispute arose on 05.08.2021 when Opposite Party No.6 (O.P. No.6) i.e. Devidutta Rath, EP holder Budha Nagar IMFL OFF shop in ward No.42 of BMC applied for shifting his shop to ward No.30 Saheed Nagar, Bhubaneswar to the Collector, Khurda under Rule 53 of Odisha Excise Rules, 2017.

4. Pursuant to the above request of the O.P. No.6 i.e. Devidutta Rath, the Collector, Khurda issued a public notice under Form-VIII dated 07.09.2021 inviting objections if any to be submitted by 22.09.2021. It is the case of the petitioner that several objections were raised which included one from the MLA of the said ward.

5. An enquiry was also conducted by the Excise Inspector who vide two reports dated 11.08.2021 & 16.10.2021 approved of the above mentioned shifting of IMFL 'OFF' Shop from ward No.42 to ward No.30. Further, the Collector, Khordha i.e. O.P. No.3 after considering the facts of the case also recommended the shifting proposal of Mr. Rath/O.P. No.6 to the Excise Commissioner. The Excise Commissioner vide order dated 28.10.2021 approved of the request and allowed the shifting of the IMFL 'OFF' Shop from ward No.42 to ward No.30 under Rule 53(5) of the Odisha Excise Rules, 2017 (hereinafter "OER, 2017").

6. On being aggrieved by the order dated 28.10.2021 passed by the Excise Commissioner, the petitioner challenged the order vide Revision Case No.14 of 2021 before the Principal Secretary to the Government of Odisha on the ground of non-compliance to Rule-24, 25, 29 & 42 by the Excise Authorities while allowing the proposal of O.P. No.6/Mr. Rath.

7. Principal Secretary to the Government of Odisha vide order dated 19.02.2022 relied upon Para 4.2.14 (iv) of Odisha Excise Policy 2021-22 which is reproduced below:-

> ***"4.2.14(iv) A shop situated in rural area will be allowed to be shifted to another location in the rural areas only. Similar***

> ***principle shall be followed in case of urban areas/wards. Shifting shall be allowed within the same excise station area.*** *Invariably, public objection shall be invited for the new location before shifting".*

Accordingly, the Principal Secretary to the Government of Odisha on relying upon the above policy and enquiry conducted by Excise Inspector confirmed that the proposed shifting is to take place within the same excise station area and no infirmity can be assumed. It also observed that the enquiry report suggests that there exists a demand for liquor in the area of ward No.30 as it is a vast area and opening of another IMFL OFF shop would cater to the need of the consumers. Also, upon a conjoint reading of 24, 25 & 29 of OER, 2017 the Principal Secretary to the Government of Odisha concluded that the Excise Authority is empowered to grant license by shifting if sufficient demand is witnessed.

On the issue of non-consideration of objections by various stake holders, the order dated 19.02.2022 passed by Principal Secretary to the Government of Odisha observed that in spite of being duly served of a notice to the petitioner, no objection was filed by her within the stipulated time. Also, no objections were received from the residents and the MLA objected belatedly i.e. after one month of the stipulated time i.e. on 22.10.2021.

In view of the above points, the Principal Secretary to the Government of Odisha rejected the Revision Case of the petitioner vide order dated 19.02.2022.

8. The main grounds raised by the petitioner to challenge the order dated 28.10.2021 and the Revision Case No.14 of 2021 dated 19.02.2022 are the contravention of Rule No.24 (Permission of the

Govt. not secured by the Collector before referring the shifting proposal of the OP No. 6 i.e. Mr. Rath to the Excise Commissioner), 25 & 29 of OER, 2017 in the impugned orders. Further, an argument is also made that all objections were raised within the stipulated time but not considered by the Principal Secretary to the Government of Odisha.

9. Heard the counsel for the parties at length.

10. On the first issue raised by the Petitioner, it is relevant to refer the relevant rules in the OER, 2017. The relevant rules are reproduced below to understand the dispute.

> *"**24.** Regulation of number of licences for any local area.-The number of licences which may be granted for any local area shall be regulated by the needs of the people of that area and no licence for the sale of any intoxicant in any local area shall be granted unless it is required either to meet an ascertained demand for such article or to counteract supply through illicit sources:*
>
> *Provided that increase or decrease in the number of licences for sale of foreign liquor and IMFL shall be subject to the prior approval of the Government to be obtained by the Collector through the Commissioner."*
>
> ***25**. Fixation of number of licences. – While fixing the number of licences to be granted for the retail sale of liquor for consumption on the premises of the vendors, it shall be ensured that –*
> *(a) liquor shops shall not be so sparsely distributed as to give to each a partial monopoly over a considerable area; and*
> *(b) two or more shops should not be equally convenient to a considerable number of persons.*
>
> ***29**. Restriction on grant of licence for sale of foreign liquor and IMFL for consumption on vendor's premises and otherwise. – Licence for the sale of foreign liquor or IMFL for consumption on the vendor's premises may be granted only in places where there is a proved demand on the part of class of drinkers accustomed to foreign liquor or IMFL and subject to the restriction laid down in rule 25 on payment of a fee as may be determined by the Government."*

> ***53**. Fixing and **shifting** of shop premises.-(1) Any person intending to obtain a license under the Act or a person selected for grant of license for retail vend of any intoxicants shall specify about the locality of vend a village, sahi or in town, a Mahala, street or certain street or word to the authority competent to grant such license.*
> *(2) If the details given under sub-rule (1) are considered vague or insufficient the Collector shall specify a particular distance from some fixed spots, from the premises where the shop is intended to be opened.*
> *(3) The details of the whole locality be fixed and notified before the settlement is made.*
> *(4) The site of the shop shall be subject to the approval of the Collector.*
> *(5) **In case of shifting of shop for any reason, the details as mentioned in sub-rule (1) shall be furnished to the Collector, who, on being satisfied refer to the Commissioner for his approval."***

On perusal of the above rules, we find the issue of shifting is not governed by Rule 24,25 and 29 of OER, 2017 but in turn governed by Rule 53 of OER, 2017 read with Para 4.2.14 (iv) of Odisha Excise Policy 2021-22. Hence, the argument of the Petitioner that the shifting was allowed by the Collector without any Govt. permission and thereby the permission to shift be quashed has no legs to stand on. The Rule 53 of OER, 2017 is complied by the Excise Commissioner and no interference is warranted by this Court. We further find that Rule 26 of the OER, 2017 relates to grant of licence towards IMFL 'ON' Shop whereas the issue at hand is in respect of IMFL 'OFF' Shop.

11. On the second issue raised by the Petitioner that its objections were not considered neither by the Excise Inspector to prepare the report dated 16.10.2021 nor by the Principal Secretary to the Government of Odisha, we find that all the objections were raised only on 22.10.2021 (much after the stipulated time to raise objection). Further, the Excise Inspector did consider the belated objections to prepare his report as mentioned in the order of the Principal Secretary to the Government of Odisha dated 19.02.2022.

12. On perusal of the aforementioned points we do not find it fit to interfere with the above impugned orders as no rules are violated.

(Jaswant Singh)
Judge

(M. S. Raman)
Judge

Sipun

11th July, 2022
Cuttack