IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.14923 of 2022

Binodini Palo .... ***Petitioner***

Mr. K.A. Guru, Advocate

-versus-

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

Mr. L. Samantaray, AGA

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN

ORDER

Order No. **13.09.2022**

03. This matter is taken up through virtual/physical mode.

1. The petitioner has preferred this writ petition with two fold prayers i.e. firstly, to adjust the amount paid by her towards failing to lift the required MGQ for the year 2019-20 & 2020-21 in the future dues and secondly, to direct the opposite parties to issue or renew licenses through solvency certificate.

2. The brief facts of the case are that the petitioner i.e. Binodini Palo is a licensee of IMFL ON Shop situated at Congress Bhawan Road, Berhampur. She has been holder of the said license from the year 2011-12 onwards and now renewed from 01.04.2022 to 31.03.2023.

3. Due to Covid-19, there was a short fall in lifting of MGQ in the whole state of Odisha including the petitioner's IMFL ON Shop. Considering the grievance of various licensees, the Excise Commissioner, Cuttack, Odisha/Opposite Party No.2

vide order dated 21.03.2022 provided for waiver of short drawn MGQ quantity subject to maximum of 10% of the total MGQ fixed for the shop for three financial years i.e. 2019-20, 2020-21 & 2021-22.

Consequently, the District Excise Officer, Berhampur applied the order dated 21.03.2022 to the petitioner and various other licensees in the jurisdiction of Berhampur Excise District vide order dated 25.03.2022.

4. It is the case of the petitioner that she has admittedly lifted the whole MGQ for the year 2021-22 but undisputedly fell short for the period 2019-20 & 2020-21 even after the admissible waiver. The District Excise Officer, Berhampur/O.P. No.4 issued a show cause notice to the petitioner over non-payment of Rs.8,89,639/- @ Rs.88.59/- per BL after considering the **waiver relating to the year 2019-20 & 2020-21.** Concededly, the said amount stands deposited by the petitioner to renew the license for the year 2022-23.

5. In the meantime, Government of Odisha, Excise Department/O.P. No.1 issued an order dated 29.03.2022 allowing 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 were 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 MGW quota of the year 2021-22, if any. The relevant is reproduced below:-

> **“**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.”**

6. Heard learned counsels for the parties at length.

7. The Opposite Parties filed a counter affidavit dated 08.08.2022. It was correctly pointed out by them that the government of Odisha/ Excise Department/O.P. No.1 vide order dated 29.03.2022 provided the benefit to **lift the short drawn MGQ only for the year 2021-22** in the next financial year i.e. 2022-23, however, it is admitted by the Petitioner that **she has lifted the whole MGQ for the excise year 2021-22** after utilizing the benefit of the waiver for the year 2021-22. The petitioner was called upon to pay the penalty of Rs.8,89,639/- for falling short to lift the MGQ in the financial year

2019-20 & 2020-21. Hence, the order dated 29.03.22 is limited to the short-fall for the year 2021-22 and is not applicable to the Petitioner for the year 2019-20 & 2020-21 and consequently, her prayer concededly cannot be allowed.

8. The second prayer of the petitioner was to direct the opposite parties to accept a solvency certificate in lieu of Bank Guarantee already submitted for renewal of license for the Excise year 2022-23. During the course of argument, Mr. L. Samantaray, learned counsel for the Opposite Parties agreed with the prayer of the petitioner and assured the Court that in case the petitioner submits her application, the same shall be considered in accordance with law.

9. In view of the aforementioned points, the Writ Petition is dismissed.

(Jaswant Singh)
Judge

(M. S. Raman)
Judge

Basudev 13th September, 2022
Cuttack