

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.18616 of 2022

Sarojini Mallick

.... Petitioner

Mr. Biswambar Mohanaty, Advocate

-versus-

State of Odisha and Others

.... Opp. Parties

Mr. L. Samantaray, AGA

**CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN**

**ORDER (Oral)
04.08.2022**

Order No.

- 02.**
- 1.** This matter is taken up through hybrid arrangement (virtual/physical mode).
 - 2.** The Petitioner is Exclusive Privilege Holder (EPF) of a license of Balisira OS Main Shop along with permission to operate branch shop at Kendupadar, in the District of Ganjam for the excise year 2022-2023.
 - 3.** The instant Writ Petition has been filed challenging the order dated 21st May, 2022 (Annexure-5) passed by the Collector, Ganjam, whereby the licence of the Balisira OS main shop has been cancelled, after approval of the same by the Government, under Section 47 of the Odisha Excise Act, 2008 (for short, "the Act, 2008"). Resultantly, the Kendupadar OS branch shop also has been closed.

4. The primary argument raised is that the provisions of Section 47 sub-Section 4 of the Act, 2008, which prescribes that a minimum of seven days notice would be issued before proceeding to cancel the licence has been violated inasmuch as concededly the show cause notice (Annexure-3) is dated 23rd December, 2021 requiring the reply to be filed by 27th December, 2021, i.e., four days only and thereby the orders are liable to be set aside.

5. Mr. Samantaray upon instructions is unable to dispute the statutory requirement of giving at least seven days prior notice under Section 47 (4) of the Act, 2008 before proceeding to order the cancellation of the licence on any of the admissible grounds specified in the Act 2008. He also concedes that by issuance of the aforesaid show cause granting four days time to reply, the aforesaid mandatory provision has not been followed.

6. It is apt to first notice the provisions of Section 47(4) of the Act, 2008 which reads as under:

“47. Power to cancel or suspend licence, permit or pass :-

(1) xxx

(2) xxx

(3) xxx

(4) *Before cancellation of the exclusive privilege, licence, permit or pass the authority cancelling it shall give to the grantee at least seven days' notice in writing of his intention to cancel it and offer an opportunity to him to show cause within the said period as to why his exclusive privilege, licence, permit or pass should not be cancelled.*

(Emphasis supplied)

From a bare reading of the aforesaid provision couched with a negative covenant, it is apparent that before passing any order by the authority to the prejudice of a licensee, he is entitled to at least a seven days notice in writing of the intention to cancel the licence in order to offer a sufficient opportunity to the licence holder to explain before any adverse order is passed against the licensee. It is well settled principle of law that if a particular act has to be done in a particular manner, as provided in any enactment, it has to be done in the same manner or not at all. Hence any notice period less than seven days would not be legally valid.

7. In view of the aforesaid facts and statutory mandatory provision, we accept the contentions raised on behalf of the petitioner. Accordingly the impugned order dated 21st May, 2022 (Annexure-5) is set aside, with liberty to the Excise Authorities to proceed afresh in accordance with law.

8. The Writ Petition is accordingly allowed.

(Jaswant Singh)
Judge

(M. S. Raman)
Judge

AKK

4th August, 2022
Cuttack