IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.37617 of 2026

CNR No. ODHC010886202026

Srimanta Kumar Dash .... ***Petitioner***

Mr. Arun Kumar Patra, Advocate

-Versus-

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

Ms. Biswabara Dash, ASC

CORAM:
HON'BLE THE CHIEF JUSTICE
AND
HON'BLE MR. JUSTICE MURAHARI SRI RAMAN

ORDER

Order No. **12.11.2026**
01.

1. Letter No.OEC-POL-PM-0318-2025/9902/Ex.(Policy) dated 12.12.2025 issued by the Excise Commissioner, Odisha and Letter No.2464/Ex. Dated 16.12.2025 issued by the Superintendent of Excise, Puri *vide Annexure-3 series* insisting for installation of fire safety equipment and obtain Fire Safety Certificate/Fire NOC from the competent authority under the provisions of the Odisha Fire Prevention and Fire Safety Rules, 2017, being questioned as arbitrary and unconscionable, brought the petitioner before this Court to assail the actions of the said authorities by way of filing the present writ petition.

2. The facts as adumbrated by the petitioner reveals that he was granted license to run restaurant with lodging and IMFL ON shop, which was renewed for the year 2026-27 till the year 2025-26. None of the authorities insisted for obtaining the Fire Safety

Certificate/Fire NOC from the competent authority but the same is directed to be obtained by letters dated 16.12.2025 and 12.12.2025 as referred to *supra*.

3. It is submitted by Mr. Arun Kumar Patra, learned Advocate that provisions of Rules 9(1)(h)(i) and (ii) and Rule 11 of the Odisha Fire Prevention and Fire Safety Rules, 2017, as amended by the Odisha Fire Prevention and Fire Safety (Amendment) Rules, 2019, provide that business or office buildings having height of 12 meters and above; or having built up area of 500 square metres or above are required to obtain Fire Safety Certificate/Fire NOC.

4. Drawing attention to "Existing Plan of Santana Bar & Restaurant & IMFL & IMFL On Shop of Sri Shrimant Kumar Dash over Revenue Plot Nos.13 & 14, Khata No.75, in the Revenue Mouza-Balukhanda, Puri, Odisha", it is contended that the business premises of the petitioner does not fall within the specifications contained in the above Rules. Therefore, it is argued by Sri Arun Kumar Patra, learned Advocate that the amendment of Rule 51(2) by virtue of the Odisha Excise (Amendment) Rules, 2026 inserting "fire safety certificate from the competent authority" is required to be read juxtaposed with Rules 9(1)(h)(i) and (ii) and Rule 11 of the Odisha Fire Prevention and Fire Safety Rules, 2017, as amended by the Odisha Fire Prevention and Fire Safety (Amendment) Rules, 2019.

4.1. It is further arduously submitted that the requirement of Fire Safety Certificate/NOC from the competent authority as amended in Rule 51(2) of the Odisha Excise Rules, 2017, having came to

be inserted by Notification dated 17.07.2026 *vide* the Odisha Excise (Amendment) Rules, 2026, with effect from 18.07.2026, being published in the Extraordinary Issue No.3273, dated 18.07.2026, cannot have retrospective operation inasmuch as the license under Rule 52 has been issued by the Department of Excise for the period from 01.04.2026 to 31.03.2027 on 06.04.2026, *i.e*. prior to coming into force the said Amendment Rules of 2026.

4.2. In order to claim parity of consideration, the learned Advocate relied on a decision of this Court rendered in the case of *S. Sanamakh Rao Vrs. State of Odisha and others, W.P.(C) No.17811 of 2026* disposed of by order dated 27.07.2026 with the following observation:

> *"1. We are not unmindful of the reality, that in public places, where there is conglomeration of large number of the people happens, the fire safety measures and equipments should be to avoid the loss of human life as well as the property. There is not even an inkling of doubt in our mind that the fire safety gadgets should be there in every such places to combat the situation, when the fire broke out; but equally, we cannot issue a writ of mandamus commanding the authorities to do a thing not provided in the statute or forbidden therein. In order to maintain the social order, the safety and security of the citizenry, every responsible persons of the society should bear in mind and take adequate steps to install the safety gadgets at the time the fire broke out, but the authorities have to proceed within the precinct of law and cannot travel beyond it. The subject matter of challenge in the instant Writ Petition is the communication of an Excise Commissioner, Odisha to all Excise Deputy Commissioner and the Superintendent of Excise, to issue a necessary direction to all licensees of*

IMFL ON shop units within their jurisdiction to obtain and maintain a valid fire safety certificate/ NOC and submit a consolidated district wide report to the Directorate on priority basis. The Petitioner apprehends that, in the event the certificate or NOC is not submitted, action would be taken to close down the IMFL ON shop for which the license has been granted, and approaches this Court with the categorical assertion that neither the Excise Department is competent to impose such conditions upon the public and/or the license granted to the holder thereof, nor do the Orissa Fire Prevention and Fire Safety Rules, 2017, contain any such provision. It is categorically stated that the structure in which the IMFL ON shop is currently operating is constructed in less than 500 square meter area and is less than 12 meter in height. It is thus, contended that Rule 9 as amended vide Odisha Fire Prevention and Fire Safety (Amendment) Rules, 2019. Rule (9)(1) as amended in 2019, keeps such premises outside the purview of obtaining the license under Section 10 of the Orissa Fire Service Act and Rule 11 of the said Rules.

2. *In order to complete the sequence of the events, it would be pertinent to recapitulate the provisions contained under Rule 11 of the said Rules, where all buildings, premises or occupancies as specified in Rule 9, shall at all times have a valid fire safety certificate as provided under Rule 13. It also forbids all the owners, developers, promoters and builders of a building or a premises, specified in Rule 9, to sell lease, occupy or allow in occupation without first obtaining the fire safety certificate, issued by the director or any officer authorized by him in this regard. It also contains a prohibitory clause in continuing with the construction or occupation in the said building. Rule 9(1) of the said Rule has undergone a significant change in the year 2019 when the Odisha Fire Prevention and Fire Safety (Amendment) Rules, 2019 was notified, which*

engulfed within its folds the following categories or class of the premises such as the following:

'(1) for the purpose of sub-section (1) of Section 10 of the Act, the following classes of premises or occupancies are likely to have risk of fire, namely:

(a) Aerodromes, airports and airstrips;

(b) Cinema Halls and Multiplexes;

(c) Explosives or fireworks or hazardous substances (manufacturing, storage, transportation, display and sale etc.);

(d) Factories and Industries;

(e) Depot of Petroleum and other inflammable substances and refineries (Storing, handling, refining, blending and retail outlets etc.);

(f) All underground or partially underground structures of five hundred square meters or above used for any purpose or occupancy;

(g) Places of Assembly like Auditoria, convention halls, Assembly halls, recreation halls etc. having a built up area of five hundred square meters and above on any one or more floors where people congregate or gather for amusement, recreation, social, religious or any other similar purposes.

(h) Business or office buildings—

(i) having a height of twelve meters and above;

Or

(ii) having a built up area of five hundred square meters or above;

(i) Clinical Establishments—

(i) clinical establishments having height of twelve meters and above or

(ii) *functioning in buildings having more than three floors including all underground, basement, stilt and mezzanine floors or,*

(iii) *having more than thirty beds or,*

(iv) *having any Critical Care Unit.*

(j) *Educational Buildings—*

(i) *having a height of twelve meters and above or,*

(ii) *having a built up area of one thousand square meters or above; or*

(iii) *having three storied building;*

(k) *Hotels, Lodgings and Guest Houses—*

(i) *having a height of twelve meters and above or,*

(ii) *having a built up area of five hundred square meters or above,*

(iii) *of three Star and above categories,*

(iv) *having places of Assembly like Auditoria, Convention Halls, Assembly Halls, Recreation Halls etc. of built up area of five hundred square meters and above on any one or more floors where people congregate or gather for amusement, recreation, social, religious and similar other purposes;*

(l) *Malls, shopping complexes and mercantile buildings—*

(i) *having a height of nine meters and above or,*

(ii) *having a built up area of five hundred square meters or above,*

(m) *Residential Buildings (other than hotels, lodgings and guest houses), having a height of fifteen meters and above;*

(n) *Temporary structures of one thousand square meters and above where the congregation is two thousand or more;*

(o) *Warehouses or Storage area of five hundred square meters built up area or above;*

(p) *Any other classes of buildings or premises notified by the State Government from time to time.'*

(b) For sub-rule (12) the following shall be substituted:

'(12) In case of existing buildings constructed or occupied prior to commencement of the Odisha Development Authority Act, 1982 on receipt of an application from the owner of the building, without sacrificing reasonable safety, the Director may grant exemption from the conditions prescribed under these rules.'

3. *Though the Petitioner has taken shelter under clause-h thereof, which relates to business or office building, having a height of 12 meters and over, but we also took notice of clause (g) and (k), which has a remote connection with the operation of the restaurant and thus, find that the mandatory requirement of a certificate is either to the premises having an height of 12 meters and above or constructed beyond 500 square meters and above area. Rule 11 as indicated herein above, thus, is applicable in relation to the premises or a class of premises identified in Rule 9(1) thereof and in the event, the same is contrived in the area and/or a height, it puts such premises or a building beyond the purview thereof. The authority cannot compel a person to do a thing, not provided in law nor can compel a person to meet the requisition if the situation keeps the same outside the purview of the statutory provision. We, thus, find that insisting upon a certificate to be issued from the fire department or an NOC is unwarranted and beyond the scope of the Excise Act and*

the Rules framed thereunder. Even if we hold that it is beyond the purview of the Act, yet the importance of providing safety measures and keeping safety gadgets within such building or the premises is a need of an hour and should not be dispensed with.

4. A responsible citizen would always make endeavour to keep those safety gadgets to avoid any incident of fire to surge and we are informed by the learned Advocate for the Petitioner that the fire extinguisher have already been installed at different places and a regular monitoring and/or refilling and/or replacement are being made from the authorized agencies."

5. Ms. Biswabara Dash, learned Additional Standing Counsel opposing grant of relief as claimed by the petitioner submitted that the competent authority is required to determine factually whether the petitioner's business premises falls within the specifications contemplated with respect to height and/or built up area under the provisions of the Odisha Fire Service Act, 1993 read with Odisha Fire Prevention and Fire Safety Rules, 2017, as amended in the year 2019. Such factual dispute is not required to be considered at this stage by the Writ Court.

6. Heard Mr. Arun Kumar Patra, learned Advocate for the petitioner and Ms. Biswabara Dash, learned Additional Standing Counsel for the State.

7. Having perused the order dated 27.07.2026 passed by this Court in the case of *S. Sanamakh Rao (supra)* and the impugned letter dated 12.12.2025 of Excise Commissioner, Odisha and dated 16.12.2025 of Superintendent of Excise, Puri, this Court feels it appropriate to leave the factual finding for determination by the authority concerned taking into consideration the plan of bar and

restaurant/shop being built up over Plot Nos.13 and 14 in Khata No.75 in the Revenue Mouza: Balukhanda, which is furnished by the petitioner enclosed with the writ petition. This Court, therefore, directs the authority to make spot verification in the presence of the petitioner and consider the documents as enclosed with the writ petition at *Annexure-2*, which is furnished to support the contention of the petitioner that the business or office building having height of 12 meters and above is only required to obtain Fire Safety Certificate from the competent authority. It is, therefore, directed that the authority shall take appropriate decision after taking into consideration the reply/explanation, if any, furnished by the petitioner and on the basis of spot verification report.

8. With such observation, the wit petition stands disposed of.

(Harish Tandon)
Chief Justice

(Murahari Sri Raman)
Judge

Rabi

Signature Not Verified
Digitally Signed
Signed by: RABINDRA KUMAR MISHRA
Designation: Personal Assistant
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 13-Nov-2026 12:20:54