

(2026) 02 OHC CK 1697
In the Orissa High Court
Case No : Writ Petition (C) No. 911 Of 2026

Ayush Sahu

APPELLANT

Vs

State Of Odisha And Another

RESPONDENT

Date of Decision : 02-02-2026

Acts Referred:

Odisha Excise Rules, 2017 — Rule 45, 45(5)
Odisha Excise Act, 2008 — Section 26, 26(1)

Citation : (2026) 02 OHC CK 1697

Hon'ble Judges : Harish Tandon, CJ; M.S. Raman, J

Bench : Single Bench

Advocate : Biraja Prasanna Das, B. Dash

Final Decision : Disposed Of

Judgement

Harish Tandon, CJ

1. It is one of the classic examples where the authority, who is vested with the powers to pass an order in terms of the statutory rules, has mechanically passed an order taking shelter on a ground not contemplated in the rules. Admittedly, the petitioner is a licensed vendor to sell the liquor from the site duly approved by the authorities.

An incident happened at the village when two persons died and it was perceived that such death occurs because of the spurious liquor consumed by them having brought from the shop of the petitioner. There appears to be a public commotion as the demonstrations and/or agitations were launched in front of the shop of the petitioner and in order to bring a public peace, an order was passed by the Collector on 17.06.2025 under Section 26(1) of the Odisha Excise Act, 2008 for temporary closure of the shop.

2. It admits no ambiguity that Section 26 of the said Act empowers the District Magistrate or Sub-Divisional Magistrate to issue a notice in writing to the licensee to close the shop at such time or for such period for the purpose of preservation

of the public peace. The said provision contained in Section 26 is quoted as under:

"26. Powers to close shops temporarily :- (1) The District Magistrate or a Sub Divisional Magistrate may, by notice in writing to the licensee require that any shop in which any intoxicant is sold shall be closed at such times or for such period as he may think necessary for the preservation of the public peace :

Provided that if the closure is required for a continuous period of more than three days, the approval of the Excise Commissioner shall be taken.

(2) If any riot or unlawful assembly is apprehended or occurs in the vicinity of any shop in which any intoxicant is sold, any Executive Magistrate, or any Police Officer not below the rank of a Sub-Inspector who is present, may require such shop to be kept closed for such period as he may think necessary.

(3) When a direction is made by a Magistrate under Sub-section (1) or Subsection (2), or any Police Officer under Sub-section (2), such Magistrate or Police Officer, as the case may be, shall forthwith inform the Collector of his action and of reasons therefor."

3. It is manifest from the proviso appended to sub-section (1) of Section 26 of the said Act that in the event the closure of the shop is perceived to continue beyond three days period, the approval of the Excise Commissioner is required to be taken in this regard. There is no quarrel to the understanding of the said provision and its applicability that such emergent power is vested upon the Collector to immediately close down the shop in which the intoxicant is sold, temporarily in order to maintain public peace but the period of such temporary closure shall not exceed beyond three days. In the event the same is required to remain closed exceeding the said period of three days, a permission and/or approval is required from the higher authority, which in fact, was adhered to and the shop of the petitioner was permitted to remain closed for a period of 35 days. Since a serious allegation was made when two persons of the village died, the law relating thereto was activated including the inquiry being made on the stocks available in the said shop and even the samples were taken for forensic examination whether it contains any substance, which is hazardous to health and may be a cause for the death. The report does not reveal that the liquor contains any such obnoxious and/or hazardous substance, which may cause the death so also the report of the post-mortem that the death was not due to consumption of the spurious liquor but of a chronic disease which the aforesaid two persons were suffering since long.

4. After realization of the aforementioned facts, the order was issued to lift the said temporary closure of the said shop and permission was granted to open the said shop in the interest of the Government revenue. Obviously, the authorities have evaluated the situation which was prevalent at the relevant point of time and after the convincing materials having found subsequently, there does not appear to the authorities any disturbance in the public peace and such

permission was granted. The petitioner invoked the provisions contained in Rule 45 of the Odisha Excise Rules, 2017 by making an application seeking the exemption to pay the monthly license fees and also minimum guaranteed quantity on a proportionate basis more particularly for the period when the said shop was temporarily closed on the order of the authorities. The authorities rejected the said application on 3rd January, 2026 on the ground that the order of temporary closure was issued as a preventive measure to avoid any untoward incident and, therefore, the prayer made under Rule 45 of the said Rules is not available to the petitioner.

5. Before we proceed, it would be apposite to quote Rule 45 which runs thus:

"45. Closure of liquor shops.— (1) Save as provided in section 26, premises licensed for the vend of country liquor, IMFL and foreign liquor, other than hotels and restaurants may be closed at any time for the preservation of peace and such premises which are on the line of march of troops shall be closed,—

(a) while troops are passing or are encamped in the vicinity;

and

(b) on the requisition of the 'Officer-in-Command' during the passage of troops.

(2) Provisions of sub-rule (1) may be applied by the Collector to hotels and restaurants as regards the sale of liquor when such action may be found necessary.

(3) The licenced premises for retail sale of foreign liquor, IMFL or country liquor in the respective areas and adjoining areas shall remain closed for such period as the Election Commission of India or the State Election Commission of Odisha directs on account of election or by-election to the Lok Sabha, Bidhan Sabha, Zilla Parishad, Panchayat Samiti, Grama Panchayat, Municipal Corporation, Municipality, NAC and other local bodies, as the case may be, specially declared as "dry days" on account of such election or by-election.

(4) All licenced premises for retail sale of foreign liquor, IMFL or country liquor shall remain closed on the 2nd day of October every year on account of the birth day of Mahatma Gandhi which has been specifically declared as dry day.

(5) No compensation shall be payable for closure of licenced premises during such days:

Provided that in case of closure of the premises of any licensed vendor under section 26 exceeding three days, a compensation proportionate to the monthly licence fee along with proportional minimum guaranteed quantity may be reduced as compensation to the licensee:

Provided further that the Commissioner shall have power to withhold or reject the claim for compensation, if he has reasons to believe that the compensation is claimed on fictitious and frivolous ground."

6. The said Rule encompasses the incident of closure of the liquor shop wherein sub-rule (5) of Rule 45 relates to compensation which the licenced vendor is entitled to. Though the substantive provisions contained in sub-rule (5) is apparently applicable in relation to sub-rule 4 thereof, where such license shop shall remain closed on 2nd Day of October every year and, therefore, no compensation can be claimed for such closure but the proviso appended thereto expanded its applicability in relation to a temporary closure made under Section 26 of the said Act and a right is conferred upon the licenced vendor to claim compensation on a proportionate basis with regard to the monthly licensed fees and the minimum guaranteed quantity. It is no longer *res integra* that the authorities cannot take shelter under any ground not enumerated in the statutory provisions. Once the statute has restricted the rejection of an application under the said provision on a specified ground, any other ground which is not encompassed therein cannot be taken by the authorities. The 2nd proviso to sub-rule (5) of Rule 45 of the said Rules vested power upon the Commissioner to reject the claim for compensation only on the ground that such claim is founded on fictitious and frivolous grounds. The two expressions i.e. 'fictitious' and 'frivolous' have to be understood in its grammatical meaning to be applied in proper perspective. The authorities cannot travel beyond the periphery of the statutory provisions and should confine its decisions within four corners thereof.

7. The word 'fictitious' is defined in Black's Law Dictionary, Revised Fourth Edition by Henry Campbell Black, M.A., 1968 as founded on a fiction, having a character of fiction; pretended; counterfeit; feigned; imaginary; and not real; false; not genuine; non-existent. The word 'frivolous' as perceived in a legal parlance and defined in the Black's Law Dictionary as reflected in the above Edition, means a thing which from a bare inspection appears to have lacking in legal sufficiency or where in view of the facts pleaded, it does not present a defense. The said words are used in judicial system when the facts pleaded are clearly insufficient and lack legal basis or legal merit. From the conjoint reading of the meanings ascribed to the aforesaid words i.e. 'fictitious' and 'frivolous', there is no cavil of doubt in our mind that if a ground for compensation is such which either has no nexus to the real state of affairs or is such which does not come under any legal provisions, the discretion so exercised by the authorities may be justified. However, in the event the facts disclosed by the person is corroborated and supported by a document issued by the statutory authorities which is incapable and/or beyond the conceivable doubt to be raised thereupon, the same cannot come within the ambit of the meaning of the terms "fictitious" and/or "frivolous grounds".

8. Undeniably, the order for temporary closure of the shop was issued by the Collector under Section 26(1) of the said Act, which was extended after recording the approval by the senior authorities and undeniably, the shop remains closed for 35 days. The exemption in the form of compensation is sought under the first proviso appended to sub-rule (5) of Rule 45 of the said Rules and despite the

power having vested upon the authorities under the 2nd proviso, the rejection on the premise that the said closure was a preventive measure, does not come within the fold of the expressions 'fictitious' and 'frivolous' grounds. The authorities have to travel within the contours of the powers conferred upon it and once the legislation has consciously omitted the expression preventive measure, such grounds cannot be invoked, as the action of the authorities is an outcome of the colourable exercise of excessive powers not conferred under the statute.

9. The impugned order dated 17.06.2025 passed by the Collector, Khordha rejecting the application is per se illegal and in violative of the provisions contained under Rule 45 of the said Rules and, therefore, the same is hereby quashed and set aside. The matter is relegated to the authority to take a decision in the light of the observations made hereinabove within four weeks from the date of communication of this order. In the event, the authority intends to give a personal hearing to the petitioner, the same shall be afforded keeping in mind the timeline fixed hereinabove.

10. With the above observations and direction, the writ petition is disposed of.