
(2021) 11 OHC CK 0188
In the Orissa High Court
Case No : Writ Petition (C) No. 36802 Of 2021

Jogi Baidya

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 30-11-2021

Acts Referred:

Citation : (2021) 11 OHC CK 0188

Hon'ble Judges : Dr. S. Muralidhar, CJ; A.K. Mohapatra, J

Bench : Division Bench

Advocate : Baibaswata Panigrahi, Debakanta Mohanty

Final Decision : Dismissed

Judgement

1. The Petitioner had to set up an IMFL OFF Shop at Langaleswar in the district of Ganjam. Pursuant to an enquiry ordered, it was found that instead of opening the said shop at Nagardiha Patana Mouza under Langaleswar Gram Panchayat the Petitioner opened it at Patharkata Mouza. As a result of a show cause notice was issued to him.

2. Opposite Party No.6 is a licensee of an ON Shop at Langaleswar. According to the Petitioner, the ON Shop was only two kilometers away of the OFF Shop of the Petitioner. Opposite Party No.6 objected to the Petitioner's continuation at Mouza Patharkata and filed W.P.(C) No.16765 of 2021 which was disposed of by this Court on 17th May, 2021 on the very first date with a direction to the Collector to dispose of the representation of Opposite Party No.6 within three months.

2. The Collector, Ganjam (Opposite Party No.3) acting on the above direction of this Court, disposed of the representation of Opposite Party No.6 on 13th August, 2021. A consequential direction was issued to the present Petitioner to shift his OFF Shop from Patharkata Mouza to Nagardiha Patana under Langaleswar Gram Panchayat within one month.

3. The Petitioner then made a own representation to the Collector, Ganjam on

27th August, 2021 asking him to reconsider his decision since he was unable to find an "unobjectionable site" at Nagardiha Patana Mouza. The Petitioner thereafter filed W.P.(C) No.26391 of 2021 in this Court. That petition came to be disposed of by this Court on 9th September, 2021 recording the plea of the learned counsel for the Petitioner that the only prayer he was seeking at that stage was for further time to shift his shop. This Court granted the Petitioner a further one month to shift the shop.

4. The Petitioner then filed a second writ petition i.e. W.P.(C) No.28141 of 2021 for a direction to the Collector to dispose of his representation. It is stated by Mr. Baibaswata Panigrahi, learned counsel for the Petitioner, that the said writ petition has been rendered infructuous since the Collector, Ganjam has decided the Petitioner's representation on 15th September which had been affirmed in appeal by the Excise Commissioner by the impugned order dated 16th November, 2021.

5. The Court has perused the said order of the Excise Commissioner. Inter alia it was noted that the Collector, Ganjam had on 15th September, 2021 already granted the Petitioner one month's time to shift the IMFL OFF shop to an unobjectionable site. Somehow, this fact was not brought to the notice of the Commissioner by the present Petitioner.

6. In the circumstances, the Excise Commissioner noted that the appeal itself had been rendered infructuous as "the appellant had himself accepted the shifting by virtue of his representation before the Collector, Ganjam" on which the Collector, Ganjam has extended the time period of one month for the Appellant to shift his IMFL OFF Shop to an unobjectionable site.

7. This is virtually, therefore, the third writ petition by the Petitioner for the very same relief. The Court finds it not possible to accede to the submission and prayer of the Petitioner that he should be allowed to continue at the present site at Mouza Patharkata under the Langaleswar Gram Panchayat. The Petitioner cannot be permitted to repeatedly raise the same issues which have been examined at length in the earlier petition which was disposed by this Court on 9th September, 2021 recording the limited prayer of the Petitioner made at that stage.

8. In view of the orders already passed by this Court which in fact has to be implemented in compliance of the undertaking given by the Petitioner himself to the Court, it would be an abuse of the process of law to entertain a further petition at the instance of the Petitioner. The writ petition is accordingly dismissed.

9. An urgent certified copy of this order be issued as per the Rules.

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