
(2009) 03 OHC CK 0043
In the Orissa High Court

Krushna Chandra Das

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 20-03-2009

Acts Referred:

Citation : (2009) 108 CLT 143 : (2009) 2 OLR 797 Supp

Hon'ble Judges : P.K. Tripathy, J; L.K. Mishra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard Learned Counsel for the parties and the Writ Petition is disposed of in the following manner:

2. Annexure-3, the license granted to the Opposite Party No. 5 for retail sale of IMFL (Off shop) at the Brahmani Bridge Chhak in the district of Jaipur for the period 26.05.2008 to 31.03.2009 is under challenge. Petitioner as Sarpanch of Raichhanda Gram Panchayat has filed this Writ Petition, inter alia, on the ground that due procedure was not followed to settle the shop and to grant license.

3. Opp. Party No. 5 is the licensee under Annexure-3.

4. Earlier the Petitioner had filed W.P.(C) No. 3661 of 2008 in his capacity as the Sarpanch of Raichhanda Gram Panchayat challenging to opening of IMFL Off shop at the aforesaid place. That Writ Petition was filed after the public notice inviting objection was notified. Date of finalizing the lottery in that case for the year 2007-08 was fixed by the Collector on 17.03.2008. The Writ Petition was filed on 11.03.2008 and interim order was passed in that Writ Petition on 13.03.2008 in Misc. Case No. 3290 of 2008. The interim order reads as follows:

If no notice was given u/s 26(A) to Raichhanda Gram Panchayat and in fact the IMFL "OFF" shop in question comes within that locality, the auction shall not be finalized without leave of this Court. Further in case it does not come within the locality of Raichhanda Gram Panchayat, the benefit of this order will not be

available to the Petitioner.

On 10.04.2008, the present Opposite Party No. 5 appeared in that Writ Petition as intervener and filed Misc. case No. 5231 of 2008 with the prayer to vacate the interim order. In that application, inter alia, she has stated that the Sarpanch, Raichhanda Gram Panchayat together with the public has submitted their common objection for opening of the Off shop at the disputed spot. In that respect, on 10.04.2008 the present Petitioner sought for an adjournment to make verification and further submission. Learned Counsel for the Petitioner states that in fact an additional affidavit was filed denying the signature in the "no objection" relied on by the intervener. But it appears on record that on 09.05.2008, the Writ Petition was dismissed in the following manner:

Learned Counsel for the Petitioner states that this Writ Petition has become infructuous by efflux of time. Therefore, this Writ Petition is dismissed as it has become infructuous. Interim Order Dated 13.03.2008 stands discharged.

The dispute relating to genuineness of the signature contained in that Writ Petition was therefore not resolved in view of the Petitioner withdrawing the Writ Petition on the ground that it had become infructuous.

5. Learned Counsel for the Petitioner invites our attention to paragraph 30 of the instructions from the Commissioner-cum-Secretary to Government vide No. 1458/1 Ex-76/2007 dated 10.03.2008. That instruction reads as under:

30) DELEGATION TO COLLECTORS TO GRANT LICENCE.

The Collector of the District would continue to exercise the powers to grant license for exclusive privilege for retail sale of IMFL and Country Liquor/OS as per the delegation made vide this Department Notification No. 3308 dated 16.05.2001 where the consideration money achieved is equal to or more than the reserve price.

The Collector of the Districts will also issue license for Bhang, Tari & Pochwai shops where the consideration money achieved is equal to or more than the reserve price.

In case of the unsettled IMFL Off, Country Spirit, Out Still, Bhang, Tari & Pochwai, the Collectors may record the reasons for non-settlement of these shops and furnish such proposals to Govt. through the Excise Commissioner for appropriate orders for settlement of these shops.

6. Petitioner argues that in view of the stay order passed, when no license was granted in favour of Opposite Party No. 5 for the entire period covered by the year 2007-08, Annexure-3 could not have been granted without compliance to the above quoted third sub paragraph of paragraph 30. On the other hand, Mr. Patra, Learned Counsel for Opposite Party No. 5 so also Learned Addl. Government Advocate state that the question of settlement was no more in dispute in view of the no objection received from the Gram Panchayat and the

people of the locality and therefore Annexure-3 amounts to renewal of the license. They further say that for the years 2007-0(r), opp. party No. 5 was the sole contender seeking license to run the Off shop at the disputed spot. As per the instruction, she being the sole applicant, she should have been granted the license, if there would not have been interim order of this Court in the earlier Writ Petition and under such circumstance, the embargo in third sub-paragraph of above quoted instruction does not put an impediment and the license, Annexure-3 is not required to be interfered with. In the above process, Learned Counsel for opp. party No. 5 also draws our attention to Annexure-B/5, the document containing no objection by the- two Sarpanchas i.e. Sarpanch of Kabatabandha Grama Panchayat & Raichhanda Grama Panchayat. Learned Counsel for Petitioner admits that no rejoinder has been filed denying or challenging to the Annexure B/5. At the same time, he argues that is not a genuine document, inasmuch as, signature of the Petitioner appears at two places in the same page. In a proceeding of this nature, a threadbare investigation be avoided if otherwise the dispute can be resolved. We adopt that principle and on perusal of the admitted signature of the Petitioner in the Writ Petition as well as the Vakalatnama & making a comparison with the signature appearing in Annexure-B/5, we are of the opinion that the same person has subscribed all such signatures. We may therefore infer that for that reason the Petitioner did not file a rejoinder challenging to Annexure B/5.

Apart from that, once the case of settlement of the Off shop was determined in the previous year, the third sub-paragraph of above quoted paragraph 30 does not create any embargo to grant license in the manner as has been done in Annexure-3.

Thus, we find that the Writ Petition bears no merit and the same is dismissed accordingly.

Misc. Case Nos. 7987 of 2008

In view of the order passed in the Writ Petition, the Misc. Case stands disposed of as infructuous.