
(2010) 03 OHC CK 0027
In the Orissa High Court

Kumuda Ch. Sahoo

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 23-03-2010

Acts Referred:

Citation : (2010) 110 CLT 123

Hon'ble Judges : I.M. Quddusi, Acting C.J.;B.N. Mahapatra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.N. Mahapatra, J.—The Petitioner in this Writ Petition has prayed for a direction to Opp. Party No. 1 -Commissioner-cum- Secretary to Government in Excise Department, Orissa, Opp. Party No. 2-Collector, Nayagarh & Opp. Party No. 3-Superintendent of Excise, Nayagarh for refund of Rs. 2,06,000 with interest which was deposited in respect of five Country Spirit Shops in Nayagarh district pursuant to the public tender held for the year 2001- 2002 on the ground that the said amount has been forfeited illegally by the Opp. Parties.

2. The case of the Petitioner is that Opp. Party No. 1 vide Notification No. 3623 dated 24.4.2001 (Annexure-1) notified the date, centre & day for settlement of Country Spirit Shops in all the districts of the State. Opp. Party No. 2, Collector, Nayagarh issued auction notice under Annexure-2 dated 25.5.2001 for the remaining period of 2001-2002 for settlement of Country Spirit Shop & IMFL Shop for the district of Nayagarh. On 4.6.2001, the auction was held for 14 country spirit shops. In the said auction, the Petitioner participated to bid in respect of Gania, Bahadajhola, Daspalla & Khadapada. He became the highest bidder & knocked the bid at Rs. 16,000, Rs. 20,000, Rs. 35,000 & Rs. 32,000 per month respectively for the aforesaid shops. Thereafter, the Petitioner deposited the consideration money for 2 months against each shop. Accordingly, on 04.06.2001 the Petitioner deposited Rs. 32,000, Rs 40,000, Rs. 70,000 & Rs. 64,000 respectively for the respective shops in question as per Annexure-3 series. Despite this, as the Opp. Parties neither issued licence in favour of the

Petitioner nor took any steps to refund security deposit, the Petitioner filed Writ Petition before this Court bearing O.J.C. No. 13131 of 2001. The said Writ Petition was disposed of on 05.10.2001 by this Court directing the Opp. Parties to refund the amount within a period of two months from the date of communication of the order. Since no step was taken by the Opp. Parties for refund of the amount pursuant to the order passed in the said Writ Petition, the Petitioner approached Opp. Party Nos. 2 & 3 several times to get back the said amount but in vain. Hence this petition.

3. Miss. Deepali Mohapatra, Learned Counsel appearing on behalf of the Petitioner submitted that the action of the Opp. Parties in withholding the total security amount of Rs. 2,06,000 is arbitrary & without authority of law. The Opp. Parties have violated the orders issued by his Court passed in O.J.C. No. 13131 of 2001. The Petitioner being unaware of the legal procedure he instead of approaching this Court has made several representations to the Opp. Parties to get back the security money. Due to non-issuance of licence by the Opp. Parties, the Petitioner could not be able to run his trade of country liquor at those places despite deposit of 2 months' license fee of Rs. 2,06,000. The said amount is lying with the Opp. Parties for at least eight years because of the laches on the part of the Opp. Parties. Hence, the Petitioner is entitled to get the same back along with interest.

4. Mr. Pattnaik, Learned Counsel for the State vehemently contended that due to the fault of the Petitioner the licence could not be issued to him. Vide Letter No. 9191 dated 19.11.2001, the Excise Commissioner instructed the Collectors to Issue licences In respect of Country Spirit Shops settled on or above the fixed reserve price approved by the Government & not to issue licence in respect of Country Spirit Shops which were settled below the reserve price & not approved by the Government. In pursuance of the said order, all successful bidders for 14 Country Spirit Shops were asked to deposit one month's consideration money by 19.11.2001 & obtain licences for their operation from 20.11.2001. Accordingly, licences were issued in respect of nine Country Spirit Shops upon deposit of one month's consideration money. Since the Petitioner did not turn up to deposit one month's consideration money, licences in respect of five Country Spirit Shops settled provisionally in his favour could not be issued. It was further contended that the Petitioner suppressing the material facts has approached the Court for refund of the security money of Rs. 2,06,000 in respect of five shops in the present Writ Petition. The Petitioner instead of depositing one month consideration money approached this Court in O.J.C. No. 13131 of 2001 to get back the advance consideration money for three shops. After disposal of the said Writ Petition, the Petitioner again filed O.J.C. No. 14086 of 2001 praying for an order directing the Opp. Parties to refund the amount of Rs. 50,000 & Rs. 14,000 deposited by him in respect of Khandapada & Nuagaon Country Spirit Shops. In the second Writ Petition, the Petitioner had not prayed for refund of the consideration money deposited in respect of three country spirit shops. Suppressing all these facts, the present Writ Petition has been filed by the

Petitioner seeking a direction for refund of Rs. 2,06,000. With the above contention Mr. Pattnaik concluded his argument with a prayer to dismiss the Writ Petition.

5. In the rejoinder, the Petitioner has stated that at no point of time the Opp. Parties have ever intimated him regarding deposit of one month's consideration money & that too he had no knowledge about the same. Since no licence was issued to the Petitioner nor his security amount was refunded to him, he approached this Court in O.J.C. No. 13131 of 2001 with a prayer to refund the security amount deposited with the Opp. Parties in respect of three shops. The prayer having been allowed by this Court, the question for not refunding the said amount does not arise. In case there was any further development, then the Opp. Parties could have moved for modification or clarification of the order of this Court. On the contrary, the Opp. Parties did not comply with the orders & acted as an Appellate authority against the order of this Hon'ble Court. The Petitioner has disclosed the fact of filing OJC No. 13131 of 21001 in the present Writ Petition. The Petitioner had paid Rs. 2,06,000 for 5 shops. Inadvertently, the fact of filing of O.J.C. No. 14086 of 2001 in respect of remaining two shops was missed out of the memory of the Petitioner for which the same is not disclosed in the present Writ Petition. In the first Writ Petition, the Petitioner had prayed for refund of Rs 1,42,000 deposited in respect of three shops & not Rs. 2,06,000. The Opp. Parties with an ulterior motive tried to mislead the Court only to escape their liability.

6. The facts which are not in dispute are that the Petitioner was the highest bidder in respect of 5 Country Spirit Shops for Gania, Bahadajhola, Daspalla, Khandapada & Nuagaon in the district of Nayagarh. He deposited Rs. 2,06,000, i.e., 2 months consideration money in respect of the above shops. Despite all this, no licence was issued by the Opp. Parties to the Petitioner in respect of all those shops. Thereafter, Petitioner approached this Court by filing O.J.C. No. 13131 of 2001 for refund of Rs. 1,42,000 deposited in respect of three shops, namely, Gania, Bahadajhola & Daspalla. This Court disposed of the said Writ Petition on 05.10.2001 with direction to the Opp. Parties to refund an amount of Rs. 1,42,000 to the Petitioner within a period of 2 months from the date of communication of the order.

The Petitioner again filed O.J.C. No .14086 of 2001 with a prayer for issuing direction to Opp. Parties to refund the amount of Rs. 64,000 deposited in respect of the rest two shops, i.e., Khandapada & Nuagaon. During pendency of the second Writ Petition, the present Writ Petition has been filed on 01.06.2009 with a prayer for direction to I the Opp. Parties to refund the entire amount of Rs. 2,06,000 deposited in respect of five shops. Admittedly, in the present Writ Petition, filing of second O.J.C. No. 14086 of 2001 has not been disclosed. Strictly speaking the present Writ Petition is not maintainable claiming refund of Rs. 2,06,000 deposited by the Petitioner in respect of five shops as two Writ Petitions bearing O.J.C. No. 13131 of 2001 & O.J.C. No. 14086 of 2001 were

earlier filed claiming refund of licence fees in respect of three shops & 2 shops respectively & O.J.C. No. 13131 of 2001 have already been disposed of with a direction to refund Rs. 1,42,000 deposited in respect of 3 shops.

It is also not in dispute that the Petitioner was not issued with licence for sale of country spirit in respect of the five shops even though he had deposited two months consideration money for those five shops. No evidence or material has been placed by the Opp. Parties in support of the contention that intimation to the Petitioner was issued to deposit consideration money for another one month in respect of the above 5 shops to which the Petitioner failed. In the circumstances, no laches can be attributed to the Petitioner for non-issuance of the licence in his favour in respect of all those 5 shops. On the other hand, it appears that the Opp. Parties have failed to perform their obligation in dealing with the matter in a fair manner. Needless to say that every action of the State or its instrumentality should not only be fair, legitimate & aboveboard but should be without affection or aversion. It should neither be suggestive of discrimination nor even apparently give an impression of buyers' favoritism & nepotism (See Haji T.M. Hassan Rawther Vs. Kerala Financial Corporation,).

Courts being custodian of law have a solemn duty to uphold the rule of law under all circumstances by directing the authorities concerned to act in accordance with law. If the rule of law is not enforced, it will certainly become a casualty in the process a costly consequence to be zealously averted by all & at any rate, by the Court. See Salkia Businessmen's Association and Others Vs. Howrah, Municipal Corporation and Others, .

Admittedly, there was no challenge by the State to the order of this Court directing refund of the consideration money to the Petitioner in O.J.C. No. 13131 of 2001. Since there is an order of this Court directing refund of the consideration money to the Petitioner, the same should have been implemented. Non-implementation of the said order constitutes flagrant violation of the order of this Court. We, therefore, direct the State Government, who is a model litigant to implement the said order forthwith.

7. Since OJC No. 14086 of 2001 is pending consideration, we don't consider it necessary to express any opinion on the subject matter of that Writ Petition, which shall be decided on its own merit.

8. With the above observations, the Writ Petition is disposed of.

I.M. Quddusi, A.C.J.

9. I agree.

10. Writ Petition disposed.