

(2006) 03 OHC CK 0014

In the Orissa High Court

Case No : Writ Petition (C) No. 11834 of 2005

Palantala Ramana Chalam and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 22-03-2006

Acts Referred:

Bihar and Orissa Excise Act, 1915 — Section 22
Orissa Excise Rules, 1965 — Rule 32

Citation : (2006) 1 OLR 497 Supp

Hon'ble Judges : M.M. Das, J;L. Mohapatra, J

Bench : Division Bench

Advocate : S. Ratho, for the Appellant; Additional Government Advocate and A.K. Mohanty, for O.P. No. 5, for the Respondent

Final Decision : Dismissed

Judgement

L. Mohapatra, J.—This writ application has been filed in the nature of public interest litigation for quashing the licence granted in favour of opposite party No. 5 to open an IMFL "ON" shop in Hotel Punyasai International at Parlakhemundi. The Petitioners are residents of Parlakhemundi. Their grievance in this writ application is that without following the procedure laid down u/s 22 of the Bihar and Orissa Excise Act, 1915 and Rules 32 of Orissa Excise Rules, 1965 licence has been granted in favour of opposite party No. 5 for opening of an IMFL "ON" shop in the restaurant. On perusal of the entire writ application, it appears that the only ground on which the grant of licence has been challenged is that no notice in Form-A was issued inviting public objection and had such notice been issued, the Petitioners could file their objections stating therein that the Hotel is situated nearer to Fire Station, Police Station, Sub-Jail, Collectorate Office, Primary School, Veterinary Office, bus stand, Shiva Temple and the place being crowded and used by the local residents, students, working women etc., opening of IMFL "ON" shop in the restaurant of the Hotel would cause undue hardship and increase the possibility of crimes being committed. It is also the case of the Petitioners that having come to know about such an attempt on the part of the

Government officials to grant a licence in favour of opposite party No. 5 without issuing public notice in Form-A, an objection was filed on 9.9.2005 before the Collector, Gajapati but the said objection was not considered. The writ application had been filed at a time when the licence had not been granted. In absence of any interim order, during pendency of the writ application, the licence has already been granted in favour of opposite party No. 5.

2. Counter affidavits have been filed by the opposite parties separately stating that all the procedures laid down under the Act and Rules have been followed and notice in Form-A has been duly published inviting objections. Since no objection was received, on the basis of the inquiry report of the Inspector of Excise, the matter was processed in terms of the provisions of the Act and Rules and licence was granted in favour opposite party No. 5.

3. The only question raised in this writ application being as to whether notice in Form-A had been given or not and as to whether the relevant provisions of the Act had been followed or not, we directed the learned Additional Government Advocate on 25.10.2005 to produce the records. Annexure-1 to the writ application is a notice in Form-A inviting objections from the public. The said notice is dated 9.8.2003 and relates to Ward No. 15 of Paralkhemundi Municipality. The said notice indicates that public objections had been invited in relation to the proposal for opening of IMFL "ON" shop in a Hotel situated on plot No. 326 in Mouza-Krushna Chandrapur. The said notice being of the year 2003, does not relate to the present case. From the record, we find that notice in Form-A inviting public objection was issued on 19.7.2005 for the remaining period of 2005-2006. In the said notice it was proposed to open IMFL "ON" in a restaurant on plot No. 728/1 and 729/1, Khata No. 30/5 in Gourachandrapur Mouza, Parlakhemundi. This notice relates to the opposite party No. 5. At the time of hearing, the learned Counsel for the Petitioners submitted that in Column-II of the said notice in Form-A the name of the restaurant/Hotel having not been mentioned, it was not possible on the part of the public to file objection in time. Though in the notice itself the name of the restaurant/Hotel had not been mentioned, plot numbers, Khata number and Mouza had been mentioned. From the record, it is further found that apart from publication of notice in Form-A at different places inviting objections, a report was submitted by the Inspector of Excise, Parlakhemundi Sadar recommending for grant of licence. The matter was thereafter processed and referred to the Excise Commissioner and ultimately the Government in the Department of Excise has approved the proposal for grant of licence. The objection which is stated to have been filed by the Petitioners in Annexure-2 is dated 9.9.2005. By the time recommendation was made, no objection had been filed within the prescribed time and, therefore, we cannot find fault with the opposite parties 1 to 4 in processing the file and recommending the licence of the opposite party No. 5 in absence of any objection. Apart from the above, the licence has been granted for the remaining period 2005-2006 and the balance period would be over shortly. We, therefore, decline to interfere with the order granting licence in favour of opposite party No.

5 which has been done after following due procedure of law.

The writ application is accordingly dismissed.

M.M. Das, J.

4. I agree.