(2023) 12 OHC CK 0105

In the Orissa High Court

Case No : Writ Petition (C) No. 39585 Of 2023

Sailabala Swain — APPELLANT

Vs

State Of Odisha And Others — RESPONDENT

Date of Decision : 18-12-2023

Acts Referred:

Citation : (2023) 12 OHC CK 0105

Hon'ble Judges : Dr. B.R. Sarangi, ACJ;Murahari Sri Raman, J

Bench : Division Bench

Advocate : A.K. Patra, S.N. Nayak

Final Decision : Disposed Of

Judgement

1. This matter is taken up by hybrid mode.

2. Heard Mr. A.K. Patra, learned counsel appearing for the petitioner and Mr. S. Nayak, learned Addl. Standing Counsel appearing for the State-Opposite Parties.

3. The petitioner has filed this writ petition seeking to quash the letter dated 20.11.2023 under Annexure-5 of the State Government addressed to the Excise Commissioner, Odisha, rejecting the proposal for conversion of existing Goda Beer Parlour "ON" shop license into IMFL Restaurant 'ON' shop (without lodging) license in favour of the petitioner over plot no.157/497, khata no.143/26 in mouza-Paikabati, under Erasama Tahasil in the district of Jagatsinghpur in the name and style as "Dolphin Bar and Restaurant" due to violation of Excise Policy, 2023-24.

4. Mr. A.K. Patra, learned counsel appearing for the petitioner contended that the order dated 20.11.2023 passed by the State Government is without assigning reason. As such, as per clause-9 of the Excise Policy, 'Beer Parlours' category would have an option to pay the differential license fee amount compared to 'Hotel/Restaurant without lodging' 'ON' category and convert into Hotel/ Restaurant without lodging 'ON' category on permanent basis and other

mandatory conditions applicable for 'Hotels/Restaurants without lodging' license would be applicable during the conversion also. It is contended that on the basis of the application filed by the petitioner though the Excise Commissioner and Collector recommended the case of the petitioner, vide Annexures-3 and 4, the State Government, without assigning any reason, rejected the same vide letter dated 20.11.2023 under Annexure-5. Therefore, the same cannot be sustained in the eye of law.

5. Mr. S. Nayak, learned Addl. Standing Counsel appearing for the State-Opposite Parties states that since there is violation of Excise Policy, 2023-24, the State Government passed the order assigning reasons under Annexure-5.

6. Having heard learned counsel for the parties and after going through the records, this Court finds that the Excise Policy contained clause-9 with regard to conversion of Beer Parlour to 'ON' shop, which is quoted hereunder;-

"'Beer Parlours' category would have an option to pay the differential license fee amount compared to 'Hotel/Restaurant without lodging' 'ON' category and convert into Hotel/Restaurant without lodging 'ON' category on permanent basis. Other mandatory conditions applicable for 'Hotels/Restaurants without lodging' license would be applicable during this conversion also."

7. For availing the benefit of the aforesaid clause, the petitioner filed application, which was recommended by the Excise Commissioner and the Collector to the Government for conversion. But, the State Government rejected the same only indicating the reasons that it contravenes the Excise Policy, 2023-24. But fact remains, if clause-9 of the Excise Policy permits conversion, the State Government would have applied its mind and passed reasoned order in Annexure-5. Therefore, this Court is of the considered view that since the order dated 20.11.2023 under Annexure-5 has been passed without assigning any reason, the same cannot be sustained in the eye of law and is liable to be quashed and is hereby quashed. The matter is remitted back to the authority concerned for its reconsideration and passing an appropriate order taking into consideration the recommendation made by the Excise Commissioner and Collector for conversion of Beer Parlour to 'ON' shop.

8. The writ petition is accordingly disposed of.

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