
(2004) 08 OHC CK 0010
In the Orissa High Court
Case No : Writ Petition (C) No. 229 of 2004

Saraswati Sahoo and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 24-08-2004

Acts Referred:

Bihar And Orissa Excise Act, 1915 — Section 22(1)
Orissa Excise (Exclusive Privilege) Foreign Liquor Rules, 1989 — Rule 3(1), 4

Citation : (2004) 98 CLT 788 : (2004) 2 OLR 367

Hon'ble Judges : A.K. Patnaik, J;A.K. Parichha, J

Bench : Division Bench

Advocate : N. Patra, A.K. Patra and B.N. Shadangi, for the Appellant; B. Mohanty-3, M.K. Mohanty-2 and M.N. Ray for Opp. Party No. 5, A. Routray, Additional Government Advocate for Opp. Party No. 4, for the Respondent

Judgement

A.K. Patnaik, J.—Petitioner No. 2 is the Sarpanch of Talapada Grama Panchayat. Petitioners 1 and 3 are the Ex-Sarpanch of the said Grama Panchayat. Petitioners 4 and 5 are the Ward Members of Ward Nos. 9 and 8 of Talapada Grama Panchayat. Petitioners 6 to 22 are all villagers of Ganeswarpur in Talapada Grama Panchayat and Petitioner 23 belongs to village Silandi in Talapada Grama Panchayat. The case of the Petitioners in this Writ Petition is that the Talapada Grama Panchayat in its meeting held on 25.6.2002 passed a resolution to request the Collector, Jagatsinghpur not to open any foreign liquor shop within Talapada Grama Panchayat for the best interest of the public as there was a College, Girls High School, market at Rahama. The State Government and the Collector after considering the said resolution of Talapada Grama Panchayat did not grant any foreign liquor licence at Rahama for the remaining period 2002-2003. But when an attempt was again made by the authorities to grant Beer Parlour "ON" licence at Rahama, the Petitioner No. 2 Sarpanch of Talapada Grama Panchayat along with others submitted an application on 4.12.2003 before the Chief Minister, Minister of Excise, Commissioner of Excise, Collector, Jagatsinghpur and Superintendent of Excise, Jagatsinghpur objecting to the grant

of such Beer Parlour "ON" licence at Rahama. The grievance of the petitioners is that despite the said objection, the State Government and the Collector have granted Beer Parlour "ON" licence in favour of the Opp. Party No. 5 on 27.12.2003 for the remaining period 2003-2004. Aggrieved, the petitioners have filed this Writ Petition under Article 226 of the Constitution for quashing the letter dated 27.12.2003 of the State Government granting Beer Parlour "ON" licence at Rahama in the district of Jagatsinghpur in favour of the Opp. Party No. 5 for the remaining period 2003-2004.

2. On 20.1.2004 this Court while issuing notice to the opposite parties passed an interim order in Misc. Case No. 203 of 2004 directing that in the meanwhile the operation of the Beer Parlour "ON" licence at Rahama village in the district of Jagatsinghpur granted to Opp. Party No. 5 shall remain suspended. The Opp. Party No. 4 has filed Misc. Case No. 3729 of 2004 and the Opp. Party No. 5 has filed Misc. Case No. 1150 of 2004 for vacating the said interim order passed on 20.1.2004.

3. Mr. Patra, Learned Counsel for the petitioners submitted that the proviso to Section 22 of the Bihar and Orissa Excise Act, 1915 makes it clear that public notice shall be given of the intention to grant any exclusive privilege under Sub-section (1) of Section 22 and that any objections made by any person residing within that area shall be considered before an exclusive privilege is granted. He argued that despite the said provision, no public notice was issued for the remaining period 2003-2004 before the exclusive privilege was granted to Opp. Party No. 5 in respect of Beer Parlour "ON" licence.

4. Mr. Routray, Learned Addl. Government Advocate, on the other hand, submitted that it will be clear from the counter affidavit filed by the Opp. Party No. 4 that public notice was issued on 18.10.2003 by the Superintendent of Excise, Jagatsinghpur inviting objection from the local public and since no objection was received within the stipulated period as mentioned in the said public notice i.e., within 2.11.2003 the licence in favour of the Opp. Party No. 5 was processed. He further submitted that the resolution dated 25.6.2002 of the Talapada Grama panchayat was not received by the office of the Opp. party No. 4 and that copy of the application dated 4.12.2003 of the Sarpanch, Talapada Grama Panchayat, Sarpanch Sailo Grama Panchayat and others, however, was received beyond the stipulated period, but the same has no relevance to the case. Mr. Mohanty, Learned Counsel for the Opp. Party No. 5 supported the said contentions of Mr. Routray and submitted that objections were invited by the public notice, but no objection was received during the stipulated time and only thereafter the Government issued the exclusive privilege in favour of the Opp. Party No. 5 for Beer Parlour "ON" licence for the remaining period 2003-2004.

5. Sub-section (1) and (1-a) of Section 22 of the Bihar and Orissa Excise Act, 1915 is quoted herein below :

" (1) The State Government may grant to any person, on such conditions and for

such period as it may think fit, the exclusive privilege :

- (a) of manufacturing, or supplying wholesale; or
 - (b) of manufacturing and supplying wholesale; or
 - (c) of selling, wholesale or retail; or
 - (d) of manufacturing or supplying wholesale and selling retail; or
 - (e) of manufacturing and supplying wholesale and selling retail, any country liquor or intoxicating drug within any specified local area;
- (1-a) The State Government may also grant to any person, on such conditions and for such period as it may think fit the exclusive privilege for retail sale of foreign liquor within any specified place :

Provided that public notice shall be given of the intention to grant any exclusive privilege under the preceding Sub-section and that any objections may by any person residing within the area affected shall be considered before an exclusive privilege is granted."

It will be clear from the language of the aforesaid proviso to Sub-section (1) that objections made by any person residing within the area affected shall be considered before an exclusive privilege is granted. Hence, if any objection is received before an exclusive privilege is granted, the said objection has to be considered by the State Government. The aforesaid proviso does not stipulate any time limit or date within which an objection is to be submitted. Rule 4 of the Orissa Excise (Exclusive Privilege) Foreign Liquor Rules, 1989 however provides that all objections which are received within the date specified in the public notice issued under Sub-rule 1 of Rule 3 of the said Rules, shall be submitted to the Government for consideration, but the said Rule does not preclude the consideration of any objection by the Government which has been received after the date specified in the public notice under Sub-rule 1 of Rule 3 of the said Rules. The objection of the Sarpancha, Talapada Grama Panchayat, Sarpanch, Sailo Grama Panchayat and others to the grant of exclusive privilege was made by the application dated 4.12.2003 and it is only on 27.12.2003 that the Government in the Excise Department after considering the proposal of the Collector granted licence for opening of Beer Parlour in favour of the Opp. Party No. 5. Considering the language of the proviso to Sub-section (1) of Section 22 the competent authority of the Government was obliged to consider the objection in the application dated 4.12.2003 of the Sarpanch, Talapada Grama Panchayat, Sarpanch, Sailo Grama Panchayat and others, even though, it was received after 2.11.2003 i.e., the last dated stipulated in the public notice.

6. For the aforesaid reasons, we quash the impugned letter dated 27.12.2003 granting exclusive privilege in respect of Beer Parlour in favour of the Opp. Party No. 5. It is open for the authorities to consider what relief, can be granted to the Opp. Party No. 5 if he has made any investment.

The Writ Petition and the Misc. Cases stand disposed of.

A.K. Parichha, J.

7. I agree.