(2023) 07 OHC CK 0007

In the Orissa High Court

Case No : Writ Petition (C) No. 8935 Of 2023

Sarojini Malik APPELLANT

Vs

State Of Odisha & Ors RESPONDENT

Date of Decision : 03-07-2023

Acts Referred:

Citation : (2023) 07 OHC CK 0007

Hon'ble Judges : Dr B.R. Sarangi, J;M.S.Raman, J

Bench : Division Bench

Advocate : S. Pattnaik, P.P. Mohanty

Final Decision : Dismissed

Judgement

1. This matter is taken up through hybrid mode.

2. Heard Mr. S. Pattnaik, learned counsel appearing for the petitioner and Mr. P.P. Mohanty, learned Additional Government Advocate appearing for the opposite parties.

3. The petitioner has filed this writ petition seeking to quash the order dated 03.03.2023 under Annexure-9 passed in Excise Revision Case No.02 of 2023 by opposite party no.2-Additional Chief Secretary to Government, Excise Department upholding the order dated 13.08.2021 passed by the Excise Commissioner, Odisha, Cuttack in Appeal Case No.48 of 2021 and forfeiting the EMD and application fee.

4. Mr. S. Pattnaik, learned counsel appearing for the petitioner contended that though the petitioner furnished two No Dues Certificates enclosing the application for grant of license of FL OFF shops/Country Liquor shops through lottery system in the State of Odisha without furnishing details as against the requirement, the same has not been taken into consideration. As a consequence thereof, the authority has rejected the application of the petitioner for grant of license of FL OFF shops/Country Liquor shops.

5. Mr. P.P. Mohanty, learned Additional Government Advocate appearing for the opposite parties contended that if the application requires particular information to be provided by the petitioner and in compliance of the same, the petitioner did not provide the detailed information, the same cannot be taken into consideration. Therefore, opposite party no.2 has rightly passed the order dated 03.03.2023 under Annexure-9 upholding the order dated 13.08.2021 passed by the Excise Commissioner, Odisha, Cuttack in Appeal Case No.48 of 2021.

6. Considering the contentions raised by learned counsel for the parties and after going through the records, this Court finds that the Collector, Ganjam, rejected the application of the petitioner for grant of license of FL OFF shops/Country Liquor shops vide order dated 23.06.2021. Challenging the said order, the petitioner filed Appeal Case No.48 of 2021 before the Excise Commissioner, Odisha, Cuttack with a prayer to refund the Earnest Monthly Deposit (EMD) to the tune of Rs.15,84,000/-deposited by her. But the Excise Commissioner, Odisha, Cuttack, vide order dated 13.08.2021 rejected the said appeal holding that the petitioner is not entitled to get her application fee as well as EMD when she made an incomplete application and furnished wrong and incorrect fact/ information, as it comes within the scope of Clause-3(xvi)(g) of the Sale Notice, which reads as follows:

"Clause-3(xi)-No license of IMFL OFF shop shall be granted to any person who is having a license for manufacturing/bottling of IMFL or Beer or Wine or Counter Liquor or Out Still Liquor.

Clause-3(xvi) (g)-If during the preliminary scrutiny or subsequently, it is found that application has not paid requisite application fee or has not deposited EMD or has submitted incomplete application form or incorrect information, his application is liable for rejection. The EMD if deposited will be forfeited in such cases."

Though learned counsel appearing for the petitioner emphatically stated that the petitioner had enclosed two No Dues Certificates with her application form, she had not given detailed information, as required. Therefore, her application should have been taken into consideration for grant of license of FL OFF shops/Country Liquor shops through lottery system in the State of Odisha. As it appears, the petitioner has not given detailed information, as required in the application form, even if she has enclosed two No Dues Certificates. Therefore, it indicates that the application of the petitioner was incomplete and bereft of the information requuired. Consequentially, the same has been rejected by the Excise Commissioner, Odisha, Cuttack, vide order dated 13.08.2021 in Appeal Case No.48 of 2021, which has been upheld by opposite party no.2-Additional Chief Secretary to Government, Excise Department in Excise Revision Case No.02 of 2023.

7. In the above view of the matter, opposite party no.2 has rightly passed the order dated 03.03.2023 under Annexure-9 in Excise Revision Case No.02 of 2023

upholding the order dated 13.08.2021 passed by the Excise Commissioner, Odisha, Cuttack in Appeal Case No.48 of 2021. Therefore, this Court does not find any error in the order dated 03.03.2023 under Annexure-9 in Excise Revision Case No.02 of 2023 so as to cause interference of this Court.

8. Accordingly, the writ petition merits no consideration and the same is dismissed.

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