

(2008) 09 OHC CK 0053
In the Orissa High Court

Shree Ganesh Women Self Help Group	Vs	APPELLANT
State of Orissa and Others		RESPONDENT

Date of Decision : 22-09-2008

Acts Referred:

Citation : (2008) 2 OLR 781

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Judgement

M.M. Das, J.—Heard Mr. S.K. Das, learned Counsel for the petitioner, Mr. M.K. Das, learned Counsel appearing for the opp. party No. 7 and Mr. S. S. Das, learned Counsel for the State.

2. The petitioner is a Women Self Help Groups under Bauripada Grama Panchayat in Simulia Block in the district of Balasore. In this writ petition, it has challenged the action of the opp. party No. 3 in renewing the licence of the opp. party No. 7 as a Dealer for dealing with essential commodities under the OPDS (Control) Order, 2008.

3. Admittedly, the opp. party No. 7 was a licensee as a Dealer under the OPDS (Control) Order, 2002, which was valid till 31.3.2008. Prior to expiry of the said licence, within the stipulated period, the opp. party No. 7 applied for renewal of his licence. Simultaneously, the petitioner made application in the month of April 2008 for grant of licence in accordance with the OPDS (Control) Order, 2008. The licence of the opp. party No. 7 was renewed on 2.6.2008.

4. The grievance of the petitioner is that in Clauses 3 to 5 of the OPDS (Control) Order, 2008, certain preferences have been given with regard to grant of licence as Dealer under the said order where it has been provided that first preference will be given to the concerned Grama Panchayat and the second preference should be given to Women Self Help Groups. Thereafter, preference will be given to Co-operative Societies and other Self Help Groups in the order of preference. Under Sub-clause (5), it has been provided that the licence of persons other than

those belonging to the categories mentioned in Sub-clause (3) or (4) shall not be renewed, if applicants from the categories mentioned in Sub-clause (3) or (4) are available for being appointed as Dealers. This sub-clause, therefore, casts a duty on the licensing authority to find out as to whether from the categories mentioned in Sub-clause (3) or (4) any are available or not. Even if, such categories of institutions might not have made application before renewal of the existing licence.

5. Sub-clause (6) provides that any authority competent to appoint and to grant renewal of licence under the said order, shall make efforts to replace private Dealers with institutional dealers like Grama Panchayat etc.

6. Since in this case, admittedly, the petitioner, who is Women Self Help Group, has already made an application for being licensed as Dealer under the said OPDS (Control) Order, 2008 and there is nothing on record to show that the Grama Panchayat made any such application which should have been given the first preference, as the petitioner, who is the Women Self Help Groups comes under the second category in order of preference in Sub-clause (3) or Sub-clause (4), before granting renewal of the licence of the opp.party No. 7, it was incumbent upon the licensing authority to grant licence to the petitioner after examining the track record and the said licensing authority could not have renewed the licence of the opp.party No. 7. It also appears that the licensing authority made no attempt to find out whether dealers, as provided under Sub-clause (3), are available or not. It also appears that on the application made by the petitioner inquiries were conducted and ultimately, culminated in a recommendation for granting licence to it. It is, therefore, clear that licence in favour of the opp.party No. 7 has been renewed in contravention of Clause (4) and (6) of OPDS (Control) Order, 2008.

7. Mr. M.K. Das, learned Counsel appearing for the opp.party No. 7, however, submits that the order refusing to grant licence is an appealable order as per Clause-17 of the OPDS (Control) Order, 2008 and, therefore, an alternative remedy being available to the petitioner, this writ petition should not be entertained.

However, the appeal provisions provides that if any person is aggrieved by an order of the licensing authority refusing to grant or renew licence etc. he can prefer an appeal before the appellate authority within 30 days. In the present case, there is no order passed refusing to grant licence to the petitioner. In my considered view, therefore, there is no scope for the petitioner to prefer an appeal as contended by Mr. M.K. Das.

8. In the above premises, this writ petition is disposed of with a direction to the licensing authority - Sub-Collector- opp. party No. 3 to consider the recommendation in favour of the petitioner and if the same is accepted and there is no other impediment, dealership licence under the OPDS (Control) Order, 2008 shall be granted in their favour. The licence of the opp. party No. 7, which has

already been renewed, shall not be allowed to be operated. But, however, the opp. party No. 3 shall also examine, if the opp. party No. 7 can be appointed as a Dealer in any other centre within the same Grama Panchayat, which is not accessible by the petitioner due to any physical barrier etc. If such centers can be found out, the opp. party No. 7 shall be allowed to continue/appointed as Dealer in respect of such centre. The entire exercise, as stated above, shall be completed within a period of six weeks from the date of filing of the certified copy of this order before the Sub-Collector-opp.party No. 3.

9. Urgent certified copy of this order be granted on proper application.