

(2006) 05 OHC CK 0015

In the Orissa High Court

Case No : Writ Petition (Civil) No. 12147 of 2005

Sri. Karuna Kar Singh and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 17-05-2006

Acts Referred:

Bihar and Orissa Excise Act, 1915 — Section 22, 26A

Citation : (2006) 1 OLR 800 Supp

Hon'ble Judges : Sujit Barman Roy, C.J;M.M. Das, J

Bench : Division Bench

Advocate : D.B. Das, for the Appellant; Government Advocate, N. Patra, A. K. Patra and B.N. Shadangi for Intervenor, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Das, J.—The Petitioners, who are residents of Kesaibahal Grama Panchayat, have filed this writ petition in the nature of Public Interest Litigation calling in question the action of the opposite parties in inviting applications for settlement of IMFL "OFF" shops in the said Grama Panchayat by way of lottery on 23.9.2005 for the year 2005-06. The Petitioners have alleged that such decision for opening of the IMFL "OFF" shop in their Grama Panchayat has been taken in violation of the provisions of Sections 22 and 26-A of the Bihar and Orissa Excise Act, 1915 (hereinafter referred to as "the Act"). It has been further alleged in the writ petition that the Kesaibahal Grama Panchayat is a scheduled area to which the provisions of Section 26-A of the Act are applicable. The said Section requires that before granting licence of exclusive privilege, prior approval of the concerned Grama Panchayat accorded with the concurrence of the Grama Sasan is required and in the present case, no such approval has been obtained from the concerned Grama Panchayat.

2. A counter affidavit has been being filed sworn to by the Deputy Superintendent of Excise, Sambalpur on behalf of the opposite parties, inter alia, denying the allegations made by the Petitioners and stating that notice to the

Grama Panchayat for approval in accordance with the provisions of Section 26-A of the Act was issued on 22.6.2005 calling for objections, if any, and specifically mentioning therein that objections received after the scheduled date shall not be entertained. The said notice was served on the Grama Panchayat on 3.7.2005 and also notice u/s 22 of the Act was served on the villagers on 27.6.2005. No objection having been received within the period specified in the said Section, i.e., 30 days with respect to the notice u/s 26-A of the Act and 15 days with respect of the notice u/s 22 of the Act, the authorities proceeded with the matter and issued notice in Form-A on 17.9.2005 inviting applications from the intending persons with required documents by 23.9.2005 for settlement of the IMFL "OFF" shop by way of lottery on 26.9.2005.

3. By order dated 30.9.2005, this Court directed that auction may be held with regard to the IMFL "OFF" shop at Kesaibahal G.P. but no final decision shall be taken without leave of the Court.

4. One Dipti Harish Ganatra has sought for intervening in the writ petition by filing Misc. Case No. 13354 of 2005, inter alia, stating that the IMFL "OFF" shop in question has been settled in her favour in a lottery held on 1.10.2005 and licence for opening of the shop was also issued in her favour.

Though the aforesaid Misc. Case was not taken up for consideration earlier, but finding that the said intervenor is vitally interested in the result of the writ petition, we allowed the learned Counsel appearing for the said intervenor to address us at the time of hearing of the case.

5. Mr. N. Patra, learned Counsel appearing for the intervenor submitted that though the interim order was passed on 30.9.2005 by this Court, but the said order reached the office of the Collector, Sambalpur on 3.10.2005. He further submitted that after issuance of the licence in favour of the intervenor on 1.10.2005, she started functioning the shop in question continued till 6.10.2005 on which date, the said licence was withdrawn vide order of the Collector pursuant to the interim order passed by this Court on 30.9.2005.

6. The question with regard to communication of the interim order dated 30.9.2005 to the Collector, Sambalpur by the office of the learned Advocate General was seriously disputed at the Bar. Learned Counsel for the Petitioners vehemently argued that three similar writ petitions were heard on 30.9.2005 and similar interim orders were passed in all the three cases. He further submitted that the interim orders were communicated to the Collector, Sambalpur by FAX on 30.9.2005 and, as such, the Collector should not have issued the licence on 1.10.2005.

7. Upon our direction, learned Counsel for the State produced the concerned records before us. The date of intimation of the interim orders passed by this Court on 30.9.2005, to the Collector, in the present case, assumes importance for the reason that by a policy decision dated 16.11.2005, the Government of Orissa decided not to issue any fresh licence and not to settle any new IMFL

"OFF" shop wherever such settlement has not been made or such licence has not been issued.

8. On perusal of the records of the office of the Collector, Sambalpur produced before us by the learned Counsel for the State, it transpires that FAX message with regard to the interim orders passed in the other two similar petitions on the same day, i.e., on 30.9.2005 were received in the office of the Collector on 1.10.2005 whereas the FAX message in the present case was received by the Collector on 4.10.2005 and on receiving the said FAX message, the Collector intimated the Superintendent of Excise, Sambalpur to keep the licence granted in favour of the intervenor, under suspension, in view of the aforesaid interim order dated 30.9.2005. Thus, it is clear that by the date the Government took the policy decision not to issue any other licences and not to settle IMFL "OFF" shops, the IMFL "OFF" shop in question was already settled and licence was also issued in favour of the intervenor. We further find that provisions of Sections 22 and 26-A of the Act have also been complied with in the present case by issuing notices thereunder to the Grama Panchayat and the villagers.

9. For the reasons indicated above, we do not find any merit in this writ petition, which is accordingly dismissed.

Sujit Barman Roy, C.J.

10. I agree.