
(2010) 03 OHC CK 0025
In the Orissa High Court

Sri Suresh Chandra Mahapatra

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 04-03-2010

Acts Referred:

Citation : (2010) 109 CLT 604

Hon'ble Judges : Sanju Panda, J;I.M. Quddusi, J

Bench : Division Bench

Judgement

Sanju Panda, J.—In this Writ Petition, challenge has been made to the decision of the State Government for opening of a new IMFL "OFF" Shop at Titipa (Charichhak) for the year 2009-2010 without complying the statutory objection filed by the Grama Panchayat, Panchayat Samiti, MLA & local residents in Form-A.

2. The facts leading to the present case are as follows:

The Petitioner is the Sarpanch of Titipa Grama Panchayat who has filed this application in the nature of Public Interest Litigation. In pursuance of notice in Form-A for opening of a new IMFL "OFF" Shop at Titipa (Charichhak), objections were called, for from the locality. The Petitioner filed an objection thereto. In the said objection, Petitioner specifically stated that the inhabitants of Titipa Grama Panchayat decided to protect them selves from the hazardous/evil,effect of consuming foreign liquor & its impact which is detrimental to the interest of the family. The said decision was taken by the people of Titipa Grama Panchayat as the villagers of Satapada are facing the impact of liquor due to existing IMFL "OFF" Shop at Satapada & its vicinity. The Collector, Puri on 23.5.2009 issued a public notice inviting objections from the public in respect of opening of a new IMFL "OFF" shop at Titipa (Charichhak) as the Govt. intended to grant exclusive privilege for retail sale of foreign liquor for the remaining period , i.e., from the date of licence to 31.3.2010. The objection to the said notice was called for fixing 6.6.2009 as the last date. The people of Titipa Grama Panchayat decided that they would file their objections to the opening of the said IMFL "OFF" shop at Titipa (Charichhak). Accordingly, they filed their objections for withdrawal of the

said proposal before the Collector as well as the Superintendent of Excise. In the said objection, they specifically stated that Gopinath U.P School is situated at a distance of 200 metres & a women's college is situated at a distance of 250 metres from the selected spot. If the IMFL "OFF" shop is opened at the selected spot, the women folk of the vicinity would face immense difficulties in moving freely & by that process the family life would be ruined in course of time. Therefore, the said shop should not be opened.

3. The Chairman of Krushnaprasad Panchayat Samiti also filed objection to the proposed opening of IMFL "OFF" shop on 3.6.2009 taking a stand that the people of the area are very poor & have no immovable property or cultivable land. They all depend on the Chilika Lake to eke out their livelihood. He also reiterated that the Gopinath D.P. School, women's college & the local people would face immense difficulties if the IMFL "OFF" shop is opened at Titipa (Charichhak). Titipa Grama Panchayat is coming under Krushnaprasad Panchayat Samiti & Brahamagiri Legislative Constituency. The local MLA also filed his objection on 9.6.2009. In the said objection he specifically stated that 35 villages, Gopinath High School & a women's college would be affected on the opening of IMFL "OFF" shop at Titipa (Charichhak). All the village committees objected to the opening of such shop in the area. Since serious objections were filed by the people of the locality, the Inspector of Excise was deputed to the spot for inquiry. He filed his report on 20.7.2009 stating therein that the village committee consisting of 35 villages strongly opposed the proposal to save the socio-economic environment & the people of the locality. Since the Collector by letter dated 22.7.2009 submitted the proposal to the Excise Commissioner for opening of IMFL "OFF" shop at Titipa (Charichhak) for the year 2009-2010 to check the illicit liquor trade in that area, meet the demand of local customers & yield Government revenue, the Excise Commissioner recommended the said proposal for opening of IMFL "OFF" shop. Therefore, the Petitioner has filed this Writ Petition.

4. Learned Counsel appearing for the Petitioner submitted that in pursuance of the said notice the local people as well as the Sarapanch of Titipa Grama Panchayat, local MLA, Chairman of Krushnaprasad Panchayat Samiti filed their objections. Ignoring the said objections, the State Government vide letter dated 24.10.2009 sanctioned for opening of IMFL "OFF" shop at Titipa (Charichhak) at a price of Rs. 35,000. Accordingly, on 9.11.2009 Opp. Party No. 3 issued a notice in Form-A inviting applications for settlement of IMFL "OFF" shop. Opp. Parties while submitting the proposal for opening of a new IMFL "OFF" shop did not consider the objection on its proper perspective which was illegal & contrary to Rule 4 of the Foreign Liquor Rules. He further submitted that the State is duty bound to protect the human life & improve public health & only to earn revenue & prevent illicit liquor trade shall not encourage sale & manufacture of liquid beverage endangering human life. Therefore, the objection of the local people should not be ignored in a mechanical manner.

5. One Bibhuti Bhusan Parida filed an application to implead himself as an Opp. Party to the Writ Petition as he is the person in whose favour the IMFL "OFF" shop at Titipa (Charichhak) has been settled. He also filed a misc. case for vacation of the stay order. However, this Court, while issuing notice did not grant any stay only observed that the result of the lottery dated 20.11.2009 shall be subject to further orders in the Writ Petition.

6. In pursuance of the order of this Court, Opp. Parties produced the relevant record as well as filed counter affidavit. In the counter affidavit the Opp. Parties have stated that a number of objections with regard to the opening of the IMFL "OFF" shop had been received from different organizations & other dignitaries & the matter had been duly enquired into by the Inspector of Excise, Puri. It was felt desirable to open of a new IMFL "OFF" shop as only one shop exists within 10 kms. radius of the proposed place & to prevent the trading of spurious liquor & to yield Government revenue, the decision had been taken to open a new IMFL "OFF" shop at Titipa (Chanchhak), Regarding the objection of existence of school, women's college, etc., the same comes under the Bihar & Orissa Excise Act & Rules & the said provisions are applicable in the case of "ON" shop & the authorities having realized the feasibility & necessity of the shop in the area, recommended the said proposal.

7. However, we have also perused the record which reveals that the authority mechanically recommended for opening of a new IMFL "OFF" shop at Titipa (Charichhak). It did not consider the objections to the opening of the IMFL "OFF" shop in the locality as per the statutory provisions. It had also taken the decision mechanically for opening of such shop as the same will prevent the illicit trading of spurious liquor as well as yield Government revenue. Objection of the eminent persons has posed hindrances on the way of the proposal. Therefore, they took the said decision.

8. Hence, this Court quashes the decision of the authorities for opening of a new IMFL "OFF" shop at Titipa (Charichhak) & remands the matter to the Opp. Parties to take a fresh decision considering the objections filed by the local people as well as the Sarapanch of Titipa Grama Panchayat, MLA, etc. in accordance with Section 4 of the Foreign Liquor Rules.

With the aforesaid direction, the Writ Petition is disposed of.

I.M. Quddusi, ACJ.

I agree.