

(2022) 08 OHC CK 0074

In the Orissa High Court

Case No : Writ Petition (C) No. 2940 Of 2022

Tapan Kumar Nanda

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 08-08-2022

Acts Referred:

Citation : (2022) 08 OHC CK 0074

Hon'ble Judges : Dr. S. Muralidhar, CJ; R.K. Pattanaik, J

Bench : Division Bench

Advocate : Arun Kumar Patra, Debakanta Mohanty

Final Decision : Disposed Of

Judgement

1. This matter is taken up by a separate notice.

2. The prayer in the present writ petition is for refund of application fees collected from the Petitioner pursuant to the sale notice dated 23rd November 2020, which stood quashed by judgment dated 12th January, 2021 passed by this Court in Writ Petition (Civil) No.32947 of 2020. The operative portion of the said judgment reads as under:

"27. For all the aforementioned reasons, the impugned order dated 23rd November, 2020 cancelling the Petitioner's license in respect of five IMFL 'Off' Shops is hereby quashed. The Intervention Application is not entertained. It is clarified that all consequential actions taken by the Opposite Parties including settling the licences in respect of three IMFL 'OFF' Shops in favour of the Interveners cannot be sustained in law. If any money has been collected by the Opposite Parties from any of the interveners, it shall be forthwith returned by the Opposite

Parties to them. The Intervention Application is accordingly disposed of."

3. Counsel for the Petitioner points out that although the present Petitioner was not intervener, he should not be discriminated against only because he did not

seek to intervene in the above writ petition. He states that he is on the same footing as the interveners in the above writ petition.

4. Mr. Mohanty, learned counsel appearing for the Opposite Parties refers to the counter affidavit filed therein and in particular to para-3 thereof, which extracts clause No. xi (b) of the sale notice, which states that the application fees collected up to Rs.1,00,000/- is non-refundable. Mr. Mohanty seeks to draw a distinction between the interveners in the above writ petition and the present Petitioner by contending that the interveners had succeeded in the lottery whereas the present Petitioner merely participated in the lottery.

5. In the context of refund having been ordered by this Court in the above judgment dated 12th January 2021, no distinction can be drawn between the interveners in the said writ petition and the present Petitioner. The fact remains that the sale notice itself stood quashed and, therefore any amount collected pursuant thereto had to be refunded. Merely because the present Petitioner did not choose to be intervene at that stage cannot be a ground to deny him the similar relief as prayed for.

6. Consequently, the Court directs that the amount collected from the present Petitioner as application fees be refunded to him within a period of eight weeks from today.

7. The writ petition is disposed of in the above terms.

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