

AFR

**IN THE HIGH COURT OF JUDICATURE FOR ORISSA
AT CUTTACK**

**W.P.(C) No.12518 of 2020
with following batch of writ petitions**

SL. No.	Case No.	Petitioner(s) name	Advocate for the petitioner(s) appeared by Video Conferencing mode:-
1.	WP(C) NO.12518 of 2020	Gopinath Sahu	Amar Kumar Mohanty, K.A.Guru, S.K.Mohapatra
2.	WP(C) NO.11792 of 2020	Mukesh Kumar Gupta	Prasanta Kumar Nayak, A.K.Mohapatra, S.Mishra, S.N.Dash
3.	WP(C) NO.12001 of 2020	Rajesh Kumar Sahu	Arun Kumar Patra, B.Shadangi
4.	WP(C) NO.12520 of 2020	Narayan Sahu	Amar Kumar Mohanty, Kousik Ananda Guru, S.K.Mohapatra
5.	WP(C) NO.12522 of 2020	Gopinath Sahu	
6.	WP(C) NO.12523 of 2020	Raj Narayan Patanaik	
7.	WP(C) NO.12524 of 2020	Gopinath Sahu	
8.	WP(C) NO.12525 of 2020	Gopinath Sahu	
9.	WP(C) NO.12526 of 2020	Raj Narayan Patanaik	
10.	WP(C) NO.12527 of 2020	Gopinath Sahu	Santanu Kumar Sarangi, A.K.Nayak, S.K.Sarangi
11.	WP(C) NO.12745 of 2020	Jagdeo Prasad	
12.	WP(C) NO.13090 of 2020	N.Basava Raju	Amar Kumar Mohanty, Kousik Ananda Guru, S.K.Mohapatra
13.	WP(C) NO.13092 of 2020	Uma Shankar Sahu	
14.	WP(C) NO.13106 of 2020	Namita Kumari Biswal	
15.	WP(C) NO.13107 of 2020	Santosh Kumar Biswal	
16.	WP(C) NO.14085 of 2020	Nakula Charan Behera	Prafulla Kumar Rath, A.Behera, S.K.Behera, P.Nayak, S.Das, S.Rath
17.	WP(C) NO.14304 of 2020	Jagdeo Prasad	Santanu Kumar Sarangi, A.K.Nayak, S.K.Sarangi, S.B.Sarangi
18.	WP(C) NO.15426 of 2020	Mamatamayee Lenka	Aruna Kumar Patra, B.Mohanty, M.K. Mohanty, K.K. Gaya
19.	WP(C) NO.15693 of 2020	Nrusingha Charan Routray	Arun Kumar Patra, B.Shadangi
20.	WP(C) NO.15709 of 2020	Arvind Kumar Sahu	
21.	WP(C) NO.15907 of 2020	Sukanta Kumar Panigrahy	Kousik Ananda Guru, A.K.Mohanty, S.K.Mohapatra
22.	WP(C) NO.15908 of 2020	Almas Khan	
23.	WP(C) NO.15965 of 2020	Manoj Kumar Nahak	
24.	WP(C) NO.15972 of 2020	Deepak Mohanty	
25.	WP(C) NO.16059 of 2020	Dibakar Swain	Biraja Prasanna Das, J.S.Maharana, D.K.Panda, S.Das
26.	WP(C) NO.16060 of 2020	Jagadish Sahoo	
27.	WP(C) NO.16061 of 2020	Pradeep Kumar Sahoo	

28.	WP(C) NO.16062 of 2020	Janaki Patra	
29.	WP(C) NO.16064 of 2020	Swarnalata Sahoo	
30.	WP(C) NO.16070 of 2020	Jay Prakash Gupta	Santanu Kumar Sarangi, A.K.Nayak, S.K.Sarangi
31.	WP(C) NO.16081 of 2020	Rabindra Kumar Biswal	
32.	WP(C) NO.16084 of 2020	Prakash Panigrahi @ Prakash Chandra Panigrahi	Arun Kumar Patra, B.Shadangi
33.	WP(C) NO.16087 of 2020	Alok Sahoo	
34.	WP(C) NO.16268 of 2020	Hemanta Ku.Sahu	Prasanta Kumar Nayak A.K.Mohapatra, S.Mishra, S.N.Dash
35.	WP(C) NO.16347 of 2020	Amar Kumar Sahu	
36.	WP(C) NO.16349 of 2020	K.Pratap Kumar Sahu	
37.	WP(C) NO.16352 of 2020	Deepak Kumar Sahu	
38.	WP(C) NO.16354 of 2020	Manoj Kumar Nanda	
39.	WP(C) NO.16357 of 2020	Khageswar Rout	
40.	WP(C) NO.16358 of 2020	Debasis Jena	
41.	WP(C) NO.16359 of 2020	Abhaya Kumar Das	Prafulla Kumar Rath, A.Behera, S.K.Behera, P.Nayak, S.Das, S.Rath
42.	WP(C) NO.16361 of 2020	Ajaya Kumar Das	
43.	WP(C) NO.16363 of 2020	Asit Kumar Das	
44.	WP(C) NO.16365 of 2020	Vivek Kumar Sahu	
45.	WP(C) NO.16366 of 2020	Hemanta Kumar Sahu	
46.	WP(C) NO.16367 of 2020	Manoj Kumar Panigrahi	
47.	WP(C) NO.16368 of 2020	Jampana Laxmi	
48.	WP(C) NO.16369 of 2020	Ramakanta Pradhan	
49.	WP(C) NO.16387 of 2020	Manoj Kumar Sahoo	
50.	WP(C) NO.16395 of 2020	Kanhu Charan Pradhan	
51.	WP(C) NO.16400 of 2020	Golaka Bihari Pattanaik	Biraja Prasanna Das, J.S.Maharana,D.K.Panda, S.Das
52.	WP(C) NO.16404 of 2020	Prakash Chandra Pradhan	
53.	WP(C) NO.16406 of 2020	Bibekananda Pradhan	
54.	WP(C) NO.16417 of 2020	Sukanta Dhal	Arun Kumar Patra, B.Shadangi
55.	WP(C) NO.16419 of 2020	Nirmal Kumar Das	
56.	WP(C) NO.16422 of 2020	Hulas Pradhan	Biraja Prasanna Das, J.S.Maharana, D.K.Panda, S.Das
57.	WP(C) NO.16423 of 2020	Nanda Kishore Mallick	Arun Kumar Patra, B.Shadangi
58.	WP(C) NO.16424 of 2020	Prafulla Kumar Pradhan	Biraja Prasanna Das, J.S.Maharana, D.K.Panda, S.Das
59.	WP(C) NO.16425 of 2020	Narayan Rout	Arun Kumar Patra, B.Shadangi
60.	WP(C) NO.16426 of 2020	Rama Chandra Mohanty	Biraja Prasanna Das, J.S.Maharana, D.K.Panda, S.Das
61.	WP(C) NO.16427 of 2020	Dipu Ranjan Sahoo	Arun Kumar Patra, B.Shadangi
62.	WP(C) NO.16428 of 2020	Pranaya Kishore Pattanaik	Biraja Prasanna Das, J.S.Maharana, D.K.Panda, S.Das

63.	WP(C) NO.16429 of 2020	Arun Kumar Sahu	Arun Kumar Patra, B.Shadangi
64.	WP(C) NO.16430 of 2020	Golaka Bihari Pattanaik	Biraja Prasanna Das, J.S.Maharana, D.K.Panda, S.Das
65.	WP(C) NO.16432 of 2020	Bimal Prasad Pattanaik	
66.	WP(C) NO.16434 of 2020	Bibhuti Bhusan Pradhan	
67.	WP(C) NO.16436 of 2020	Subash Chandra Patnaik	
68.	WP(C) NO.16438 of 2020	Kishor Kumar Sharma	
69.	WP(C) NO.16440 of 2020	Sadhu Saran Gupta	
70.	WP(C) NO.16443 of 2020	Smruteeshree Routray	
71.	WP(C) NO.16445 of 2020	Rajendra Kumar Rout	
72.	WP(C) NO.16453 of 2020	Tarakanta Sahoo	
73.	WP(C) NO.16456 of 2020	Pramod Chandra Nayak	
74.	WP(C) NO.16459 of 2020	Hara Prasada Mohapatra	
75.	WP(C) NO.16460 of 2020	Binodini Routray	Kousik Ananda Guru, A.K.Mohanty, S.K.Mohapatra
76.	WP(C) NO.16461 of 2020	Manmohan Routray	
77.	WP(C) NO.16462 of 2020	Urmila Behera	Biraja Prasanna Das, J.S.Maharana, D.K.Panda, S.Das
78.	WP(C) NO.16463 of 2020	Nibas Kumar Subudhi	
79.	WP(C) NO.16464 of 2020	Kabita Patnaik	Kousik Ananda Guru, A.K.Mohanty, S.K.Mohapatra
80.	WP(C) NO.16465 of 2020	Prasadini Samal	
81.	WP(C) NO.16466 of 2020	Priya Ranjan Pradhan	Biraja Prasanna Das, J.S.Maharana, D.K.Panda, S.Das
82.	WP(C) NO.16467 of 2020	Nibedita Bishoyi	Kousik Ananda Guru, A.K.Mohanty, S.K.Mohapatra
83.	WP(C) NO.16468 of 2020	Sibaji Samal	
84.	WP(C) NO.16469 of 2020	Danardan Parida	Biraja Prasanna Das, J.S.Maharana, D.K.Panda, S.Das
85.	WP(C) NO.16470 of 2020	Jitendra Pradhan	
86.	WP(C) NO.16472 of 2020	Bijay Kumar	
87.	WP(C) NO.16474 of 2020	Ranjit Prasad	
88.	WP(C) NO.16476 of 2020	Kedar Prasad	
89.	WP(C) NO.16477 of 2020	Yogesh Sahu	
90.	WP(C) NO.16478 of 2020	Prasanta Kumar Sahoo	
91.	WP(C) NO.16479 of 2020	Bhaja Gobinda Routray	
92.	WP(C) NO.16481 of 2020	Sabitri Das	
93.	WP(C) NO.16483 of 2020	Rajesh Swain	
94.	WP(C) NO.16485 of 2020	Manzoor Ali	
95.	WP(C) NO.16487 of 2020	Samarendra Jena	
96.	WP(C) NO.16489 of 2020	Laxman Samantara @ Samantaray	
97.	WP(C) NO.16491 of 2020	Anita Mohapatra	
98.	WP(C) NO.16493 of 2020	Braja Kishore Nanda	
99.	WP(C) NO.16496 of 2020	Paresh Mallick	
100.	WP(C) NO.16498 of 2020	Pramod Kumar Nanda	
101.	WP(C) NO.16502 of 2020	Umakanta Majhi	
102.	WP(C) NO.16504 of 2020	Bhaja Gobinda Routray	
103.	WP(C) NO.16507 of 2020	Ranjit Prasad	
104.	WP(C) NO.16509 of 2020	Dinanath Singh	

105.	WP(C) NO.16511 of 2020	Mahendra Dash	
106.	WP(C) NO.16519 of 2020	Sukumar Maity	
107.	WP(C) NO.16521 of 2020	Suvendu Jena	
108.	WP(C) NO.16523 of 2020	Manoj Kumar Sahoo	
109.	WP(C) NO.16526 of 2020	Ranjit Prasad	
110.	WP(C) NO.16530 of 2020	Paresh Mallick	
111.	WP(C) NO.16541 of 2020	Sadhu Saran Gupta	
112.	WP(C) NO.16547 of 2020	Siddhartha Sahu	
113.	WP(C) NO.16552 of 2020	Ashok Kumar Sahu	
114.	WP(C) NO.16556 of 2020	Pitamber Mallick	
115.	WP(C) NO.16566 of 2020	Rabindra Kumar Mallick	
116.	WP(C) NO.16569 of 2020	Gouri Barik	
117.	WP(C) NO.16571 of 2020	Champarani Mandal	
118.	WP(C) NO.16573 of 2020	Bibekananda Pradhan	
119.	WP(C) NO.16575 of 2020	Manoj Kumar Sahoo	
120.	WP(C) NO.16577 of 2020	Hemanta Kumar Sahoo	
121.	WP(C) NO.16578 of 2020	Jayanta Kumar Swain	
122.	WP(C) NO.16584 of 2020	Duryodhan Bariki	Laxmidhar Dash, S.Mohanty, P.K.Mohanty
123.	WP(C) NO.16585 of 2020	Sujata Sahu	
124.	WP(C) NO.16587 of 2020	Suryamani Nanda	
125.	WP(C) NO.16589 of 2020	Bibekananda Routray	Biraja Prasanna Das, J.S.Maharana, D.K.Panda, S.Das
126.	WP(C) NO.16590 of 2020	Bijay Kumar Ghadei	
127.	WP(C) NO.16593 of 2020	Sabita Nanda	
128.	WP(C) NO.16595 of 2020	Gunamani Biswal	
129.	WP(C) NO.16598 of 2020	Bikash Ranjan Biswal	
130.	WP(C) NO.16601 of 2020	Sambit Mohanty	
131.	WP(C) NO.16603 of 2020	Puspalata Mallick	
132.	WP(C) NO.16720 of 2020	Shreeharsa Mishra	Bibhu Prasad Mohanty, B.Mohapatra, S.Sahani, S.Satpathy, R.Dalai
133.	WP(C) NO.16722 of 2020	Pramil Kumar Dalai	
134.	WP(C) NO.16812 of 2020	Dusmanta Kumar Palai	Kousik Ananda Guru, A.K.Mohanty, S.K.Mohapatra
135.	WP(C) NO.16817 of 2020	L.Sanjukta Sahu	
136.	WP(C) NO.16820 of 2020	Rama Krushna Lenka	
137.	WP(C) NO.16823 of 2020	Baikuntha Charan Sahoo	Arun Kumar Patra, B.Shadangi
138.	WP(C) NO.16834 of 2020	Kshamanidhi Samal	Biraja Prasanna Das, J.S.Maharana, D.K.Panda, S.Das
139.	WP(C) NO.16870 of 2020	Rama Krushna Lenka	Kousik Ananda Guru, A.K.Mohanty, S.K.Mohapatra
140.	WP(C) NO.17016 of 2020	Balaram Panigrahi	Bigyan Kumar Sharma, S.K.Singh, S.Palei, S.Sethi
141.	WP(C) NO.17112 of 2020	Satrughana Patra	Biraja Prasanna Das, J.S.Maharana, D.K.Panda, S.Das
142.	WP(C) NO.17114 of 2020	P.Subash Chandra Patra	
143.	WP(C) NO.17219 of 2020	Rajan Prasad	
144.	WP(C) NO.17220 of 2020	Surendra Nath Barik	Prafulla Kumar Rath, S.K.Pattnaik, A.Behera, S.K.Behera, P.Nayak, S.Das, S.Rath
145.	WP(C) NO.17221 of 2020	Sanghamitra Mohanty	
146.	WP(C) NO.17224 of 2020	Chhaya Sahu	
147.	WP(C) NO.17634 of 2020	Sri Vivek Kumar Sahu	

148.	WP(C) NO.17660 of 2020	Sanghamitra Dash	A.Routray, M.Routray
149.	WP(C) NO.17673 of 2020	Sri Bijan Kumar Sahoo	Prafulla Kumar Rath, A.Behera, S.K.Behera, P.Nayak, S.Das, S.B.Rath
150.	WP(C) NO.16748 of 2020	Santi Lata Sahu	Kousik Ananda Guru,
151.	WP(C) NO.16798 of 2020	Raghunananda Dalai	Amar Ku. Mohanty, Sanjay
152.	WP(C) NO.16815 of 2020	Bikram Kumar Sahoo	Ku. Mohapatra
153.	WP(C) NO.17599 of 2020	Shantanu Kumar Dash	A.N.Routray, M.Routray
154.	WP(C) NO.17614 of 2020	Shantanu Kumar Dash	
155.	WP(C) NO.17691 of 2020	Shantanu Kumar Dash	
156.	WP(C) NO.17635 of 2020	Anita Patra	Arun Kumar Patra, B.Shadangi
157.	WP(C) NO.17680 of 2020	Manas Kumar Sarkar	
158.	WP(C) NO.17681 of 2020	Shyamsundar Sahoo	
159.	WP(C) NO.17696 of 2020	Fakira Charan Behera	
160.	WP(C) NO.17697 of 2020	Sandhyarani Ghadei	Achyutananda Routray, M.Routray
161.	WP(C) NO.17780 of 2020	Manish Sahu	
162.	WP(C) NO.17789 of 2020	Sukanti Sahoo	Sidhartha Das, A.K.Mohanty,S.P.Tripathy, V.R.Behera
-Versus-			
State of Orissa and others			Opposite Parties
			Mr. A. K. Parija, Advocate General along with Mr. M.S. Sahoo, A.G.A. (for State of Orissa)

**HONOURABLE THE CHIEF JUSTICE MR. MOHAMMAD RAFIQ
A N D
HONOURABLE MR. JUSTICE K. R. MOHAPATRA**

J U D G M E N T

03.08.2020

Per: Mohammad Rafiq, CJ.

All these writ petitions are founded on identical facts and raise a common question of law whether the Government of Orissa in its Department of Excise can insist on furnishing Bank Guarantee, instead of Solvency certificate, for grant or renewal of Excise Licenses in respect of

IMFL 'ON' Shops/IMFL 'OFF' Shops, Beer Parlour ON shops, CL Shops/OS Shops, retail vend of IMFL, country spirit, fermented Tari, Pachwai and Bhang etc. As agreed upon by learned counsel for the parties, all writ petitions were taken up together for analogous hearing and passing a common judgment and order.

2. Under challenge in all these writ petitions is the letter No.2009 dated 30.03.2020 addressed by the Additional Secretary to Government, Government of Odisha, Department of Excise to the Excise Commissioner, Odisha conveying that the Revenue & Disaster Management Department as per their order No.465 dated 02.01.2020 has decided to phase out issue of Solvency certificate by Revenue Authorities for grant or renewal of excise licenses and therefore insisted on producing for Bank Guarantee in lieu thereof for renewal and issuance of license. Since W.P.(C) No.12518 of 2020 has been taken up as the leading case, we shall briefly narrate the averments made therein to examine legality of the impugned action of the State Authorities. The petitioner in this case is a licensee in respect of Sikula IMFL Shop. The license was originally issued to him under the Bihar and Odisha Excise Act and the rules made thereunder. However, the license in the year 2017 was issued under the Odisha Excise Act 2008 (for short, "the 2008 Act"). The petitioner has been paying monthly consideration amount along with other statutory dues for issuance of license. Copy of the license of the year 2019-20 has been produced on record. It is contended that the State Government in the Department of Excise vide order No.2003 dated 28.03.2020 renewed

the different excise licenses for the 1st quarter of the financial year 2020-21. While the excise licenses are renewed automatically, the Government made changes in rates and guidelines as applicable. The Government in the aforesaid order mentioned that all excise Duty and Margin Structure along with Regulatory Guidelines, which are not mentioned specifically in the order, would continue as per the policy of the year 2019-20. When the petitioner submitted documents along with Solvency certificate for renewal of license as required under Rule 51 read with Rule 150 of the Odisha Excise Rule 2017 (for short, “the Rules of 2017”), the Competent Authority refused to receive the same and required the petitioner to submit the documents along with Bank Guarantee and not the Solvency certificate. It has been contended that the State Government in its Revenue and Disaster Management Department vide order No.465 dated 02.01.2020 directed to phase out the practice of issuing of Solvency certificates and instructed all the department not to ask for such certificate for grant of any kind of license, such as license to storage agents, grant or renewal of Excise License, query license, etc. and advised them to insist on producing IT Returns or Bank Guarantee, etc. for issuance of license. The Excise Department of the Government of Orissa accordingly vide impugned letter dated 30.03.2020 directed the authorities to substitute Solvency certificate by Bank Guarantee.

3. Learned counsel for the petitioners submitted that the Government of Orissa by the aforesaid letter dated 30.03.2020 cannot supersede or override the statutory provisions contained in Rule 51 and

Rule 150 of the Rules of 2017. Rule 51 inter alia provides that an application for grant of license of Foreign Liquor or IMFL or Beer “ON” shops shall be submitted in Form XI-B and such application shall be accompanied by the documents enumerated in sub-rule (2) thereof, in clause (e) of which it is mentioned that attested copy of Solvency certificate indicating the solvency of the applicant to the extent of three lakhs rupees shall be furnished. Rule 51 being statutory rule, the impugned order dated 30.03.2020, which is an executive instruction, has to yield to it. Rule 150 of the Rules of 2017 also provides for furnishing Solvency certificate for license of retail vend of IMFL, country spirit, fermented Tari, pachwai and Bhang. It is contended that the Rules of 2017 have been framed by the State Government in exercise of powers conferred upon it under Section 90 read with Section 94 of the 2008 Act, which have been published in the Odisha Gazette dated 10.03.2017. It is settled principle of law that a statutory provision of law or the Rules cannot be overridden by the executive instructions and in the event of conflict, the former will prevail. It is contended that Solvency certificates are issued under Rule-3 of the Odisha Miscellaneous Certificate Rule 2017 (for short, “the Certificate Rules”). Rule-4 thereof provides that a person desirous of obtaining Solvency certificate would apply to the Revenue Officer concerned. Such application should be accompanied by an affidavit sworn in before a Magistrate incorporating the details of immovable properties, the income and source thereof. The Revenue authority on receipt of the application shall cause an enquiry and scrutinize the documents furnished by the applicant. After verification, the Sub-

Divisional Officer by invoking power under Rule-3 of the Certificate Rules is competent to grant a Solvency certificate. It is therefore prayed that the writ of mandamus may be issued in the terms as prayed for and the impugned order of the Government of Orissa dated 30.03.2020 be quashed and set aside.

4. Shri Ashok Parija, learned Advocate General appearing for the State opposed the writ petitions and submitted that Government has taken a uniform decision in respect of all the departments wherever lease/license are issued. Attention of the Court was invited towards order of Government in its Revenue & Disaster Management Department dated 02.01.2020 to argue that a policy decision has been taken to phase out the practice of issuing the Solvency certificates as it consumes a significant amount of time of both of the citizens and the Revenue Officers. It is contended that clause-6 of the aforesaid letter provides that no Department shall now ask for Solvency certificate for, grant of license to storage agents, grant or renewal of excise license, quarry lease, etc. They would instead ask for IT returns or Bank Guarantee, etc. for issuing such licenses. The concerned Department including the Excise Department were asked to follow the instructions. It is pursuant to the aforesaid that the Excise Department of the Government of Orissa has issued the impugned letter dated 30.03.2020.

5. Learned Advocate General, however, when confronted with the statutory prescription made in Rule 51 and Rule 150 of the Rules of 2017 and asked to explain how the statutory rules can be superseded by

the executive instructions, fairly submitted that the Government is in the process of incorporating the appropriate amendments in the Rules of 2017 to provide for Bank Guarantee in place of Solvency certificate.

6. We have given our thoughtful consideration to rival submissions and examined the material on record.

7. In order to appreciate the issue involved, we deem it appropriate to reproduce hereunder sub-rules (1) and (2)(e) of Rule 51 of the Rules of 2017:-

“51. Application for grant of license of Foreign Liquor or IMFL or Beer “ON” shop.—(1) Subject to the provisions of these rules, an application for Foreign Liquor or IMFL or Beer “ON” shops shall be submitted in Form XI-B only by those who are having hotels or restaurants.

(2) The application shall be accompanied with the following documents, namely:-

xxx

xxx

xxx

(e) attested Copy of Solvency Certificate indicating the solvency of the applicant to the extent of Three lakhs rupees;

xxx.”

Since sub-rules 1 and 2 (e) & (f) of Rule 150 of the Rules of 2017 would also be relevant for the purpose of deciding the case, they are reproduced hereunder:-

“150. Manner of fixation and realization of fees.—

(1) The fees for licences for the retail vend of IMFL, country spirit, fermented Tari, pachwai and Bhang shall be such as fixed by auction, or e-auction, tender, e-tender or otherwise subject to reserve price determined in each case by the State Government.

(2) Where the retail sale of intoxicant is made through e-auction the following conditions shall be fulfilled by the bidder along with other terms and conditions to be

*notified by State Government, from time to time, namely
:—*

xxx

xxx

xxx

(e) the bidder from inside the State shall furnish solvency certificate equivalent to six times of the monthly reserve price in respect of immovable property or Bank Guarantee;

(f) the bidders from outside the State shall furnish Bank Guarantee equivalent to six times of the monthly reserve price done with local surety”

Rule 3(1)(iv), 3(3), 4(1)(iv) and 4(3) of the Certificates Rules 2017, being relevant for deciding the present batch of writ petitions, are also reproduced hereunder:-

“3. Categories of miscellaneous certificates:- (1) Subject to the provisions hereinafter contained, a Revenue Officer shall be competent to grant following categories of miscellaneous certificates, namely:-

- (i) *xxx*
- (ii) *xxx*
- (iii) *xxx*
- (iv) Solvency certificate (Form No.IV)
- (v) *xxx*
- (v-1) *xxx*
- (vi) *xxx*

(2) *xxx*

(3) The solvency certificate for an amount exceeding five lakh rupees shall be granted by the Tahasildar and Additional Tahasildar subject to the approval of Sub-Collector.

4.(1) Application for miscellaneous certificates:- A person desirous of obtaining a certificate shall file before a Revenue Officer an application,-

- (i) xxx
- (ii) xxx
- (iii) xxx
- (iv) for issuance of Solvency certificate, in Form No.4;**
- (v) xxx
- (vi) xxx
- (2) xxx

(3) An application for solvency certificate shall be accompanied by the list of immovable properties along with the encumbrance certificate.”

8. Sub-rule 1 of Rule 51 of the Rules of 2017 inter alia provides that subject to the provisions of these rules, an application for Foreign Liquor or IMFL or Beer “ON” shops shall be submitted in Form XI-B. Form XI-B is captioned as “APPLICATION FORM FOR GRANT OF LICENSE FOR RETAIL VEND OF IMFL/BEER FOR CONSUMPTION IN VENDOR’S PREMISES FOR THE YEAR 20”. Clause-10 of the said application in Form XI-B requires the applicant to answer “whether Solvency is the extent of Rs.3.00 (Three lakhs) and that copy of the Solvency certificate to be enclosed”. Rule 51 (2) provides that the application shall be accompanied with the documents mentioned in various clauses thereof. Clause (e) of sub-rule (2) of Rule 51 of the Rules of 2017 mentions attested copy of Solvency certificate indicating the solvency of the applicant to the extent of three lakhs rupees as one of the requisite documents. Rule 150 of the

Rules of 2017 provides that the fees for licenses for the retail vend of IMFL, country spirit, fermented Tari, pachwai and Bhang shall be such as fixed by auction, or e-auction, tender, e-tender or otherwise subject to reserve price determined in each case by the State Government. Sub-rule 2 of Rule 150 of the Rules of 2017 provides that where the retail sale of intoxicant is made through e-auction, the conditions enumerated therein shall be fulfilled by the bidder along with other terms and conditions to be notified by State Government, from time to time. Clause (e) of Rule 150 of the Rules of 2017 provides that the bidder from inside the State shall furnish Solvency certificate equivalent to six times of the monthly reserve price in respect of immovable property or the Bank Guarantee. Clause (f) of sub-rule 2 of Rule 150 supra however does not give that option to the bidders from outside the State and requires them that they shall furnish Bank Guarantee equivalent to six times of the monthly reserve price along with local surety.

9. Comparison of clause(e) with clause (f) of sub-rule 2 of Rule 150 of the Rules of 2017 makes it abundantly clear that State has the policy of giving the facility to bidders from inside the State to furnish either the solvency certificate equivalent to six times of the monthly reserve price in respect of immovable property or the Bank Guarantee. This apparently leaves it at the option of the bidders to choose from either of the two, but no such facility has been given to the bidders from outside the State, who are required to necessarily submit the Bank Guarantee equivalent to six times of the monthly reserve price along with local

surety. While Rule 51 does not at all mention about the requirement of Bank Guarantee but Rule 150(2)(f) has mentioned about the necessity for the bidders from outside the State to furnish Bank Guarantee equivalent to six times of the monthly reserve price done with local surety.

10. Let us now examine the matter from the perspective of the Certificate Rules. Rule-3(iv) and Rule 3(3) thereof provide for issuance of Solvency certificate. Rule-4(1)(iv) of the Certificate Rules provides that a person desirous of obtaining a Solvency certificate would apply to the Revenue Officer concerned on application in Form No.IV. Rule 4(3) of these Rules provides that application should be accompanied by an affidavit sworn in before a Magistrate, incorporating the details of immovable properties, the income and source thereof. On receipt of such application, the Revenue Officer shall cause an enquiry and scrutinize the documents furnished by the applicant. After the process of verification is complete, the Revenue Officer concerned by invoking power under Rule-3 (iv) of the Certificate Rules shall issue solvency certificate on Form No.IV.

11. In view of the above discussed position of law, it must be held that the statutory prescription enumerated in the statutory Rules namely; Rule 51 and Rule 150 of the Rules of 2017 and Rule 3 and Rule 4 of the Certificate Rules, cannot be overridden by mere executive order issued by the Revenue & Disaster Management Department dated 02.01.2020. As a logical corollary thereto, the impugned order issued by the Excise Department dated 30.03.2020, being ultra vires of the Rules aforementioned, is wholly incompetent. Even if the Government were to

suitably amend the Rules now, in so far as the present batch of petitions is concerned, such amendment cannot completely omit the provision of producing the Solvency certificate and require the production of the Bank Guarantee. Even if such provision is brought in the Rules by way of amendment, it shall obviously be applicable only prospectively and not retrospectively.

12. We may in this connection usefully refer to the judgment of the Supreme Court in **State of Orissa & ors. Vs. Prasana Kumar Sahoo**, reported in (2007) 15 SCC 129. Their Lordships of the Supreme Court, while dealing with a similar situation of conflict between executive instructions and statutory rules, in para-12 of the report, held as under:-

“12. Even a policy decision taken by the State in exercise of its jurisdiction under Article 162 of the Constitution of India would be subservient to the recruitment rules framed by the State either in terms of a legislative act or the proviso appended to Article 309 of the Constitution of India. A purported policy decision issued by way of an executive instruction cannot override the statute or statutory rules far less the constitutional provisions.”

13. In view of the foregoing discussion, all the writ petitions deserve to succeed and are accordingly allowed. The impugned order dated 30.03.2020 is quashed and set aside. Interim orders passed in all the writ petitions except W.P.(C) Nos.16585, 16748, 16798, 16815, 17599, 17614, 17691, 17635, 17680, 17681, 17696, 17697, 17780 & 17789 of 2020, directing the authorities to renew the licenses of the petitioners on production of the Solvency certificate, subject to fulfillment of other

conditions are made absolute. Such order shall also obtain in all other writ petitions.

14. In the light of the view that we have taken of the matter, the State Government and its authorities are directed to renew the licenses of the petitioners on production of the Solvency certificate, subject to fulfillment of other conditions.

There shall be no order as to costs.

(K.R.MOHAPATRA)
JUDGE

(MOHAMMAD RAFIQ)
CHIEF JUSTICE

//M. Panda//P.A.