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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.22144 of 2022

Smt. Puspallata Samal **Petitioner**

-Versus-

State of Odisha and others **Opposite Parties**

Advocates appeared in this case:

For Petitioner : Mr. Prafulla Kumar Rath,
Senior Advocate
Mr. S.B. Rath, Advocate

For Opposite Parties : Mr. Subha Bikash Panda,
Additional Government Advocate

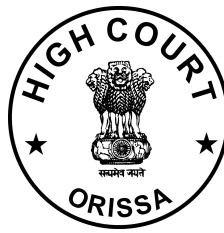
CORAM:
HON'BLE THE CHIEF JUSTICE
AND
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

J U D G M E N T

Date of Hearing and Judgment : 29th October, 2025

HARISH TANDON, CJ.

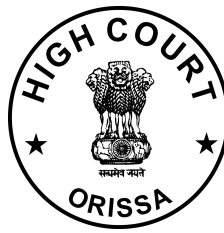
1. The challenge in the instant writ petition is made to the letter dated 22nd August, 2022 (Annexure-1) issued by the Additional Secretary to Government of Odisha, Excise Department whereby and whereunder



the petitioner was directed to deposit the pending license fees from the year 2018-19 for consideration of a proposal for continuity of the license.

2. The prelude to the litigation is required to be adumbrated which reveals that the petitioner was granted a license since 2009-10 for IMFL On Shop from the existing site and after compliance of all the statutory formalities, the same was renewed from time to time until 2017 when the apex Court in case of ***State of Tamil Nadu v. K. Balu and another, (2017) 2 SCC 281*** directed the closure of all the liquor shops, which are visible from the National highways or the State highways; directly accessible from a National highway or the State highway and situated within the distance of 500 meters of the outer edge of the National highways or State highways or of service lane along the highway.

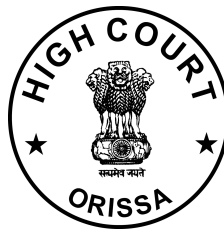
2.1. After the judgment of the Supreme Court rendered in the above noted decision, the State Government issued an omnibus notice for closure of the liquor shops, which are within the distance norms as indicated in the judgment and order rendered by the apex Court. Thereafter, in ***Arrive Safe Society of Chandigarh v. The Union Territory of Chandigarh and another*** (Special Leave Petition (Civil) No.10243 of 2017), the apex Court, in effect, relaxed the distance norms and impliedly modified the said order to the extent that the prohibitions so created in case of ***K. Balu*** (supra) shall not apply to any licensed establishments situated within a



municipal area and directed the Government to issue the appropriate clarificatory orders in this regard.

2.2. Subsequently, miscellaneous applications were filed in ***K. Balu's*** case by the different applicants flagging several issues relating to the adherence of the distance norms in respect of licensed establishments, which are situated within the local bodies. By an order dated 23rd February, 2018, the apex Court observed that the State Government may not be precluded from determining whether the principles laid down by the Court in ***Arrive Safe Society of Chandigarh*** (supra) should apply to the areas covered under the local self-governing bodies and the statutory development authorities. The apex Court directed the State Government to make a determination and correspondingly, directed the applicants/individual licensees to submit their representations to the competent authorities for taking a conscious decision in this regard.

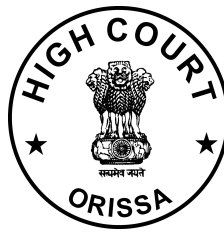
2.3. Undeniably, the State took a conscious decision that the licensed shop situated within the local bodies or the statutory bodies shall not be closed, if the other conditions enshrined therein are fulfilled. However, in the instant case, a letter was issued to the petitioner to suggest an alternative site which is unobjectionable as there appears to be some kind of an impasse having created at the existing site. It is also not disputed that the period i.e. 2017-18 when the order of the Supreme Court was operative, resultantly effected, all the licensed institutions to be closed for



that no claim on account of the license fee and/or duty was charged upon the petitioner.

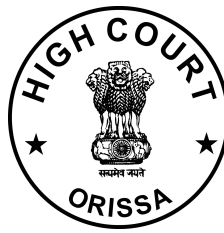
2.4. To the petitioner's dismay, as and when he suggested an alternative place to shift the said shop, the State found an objection having raised therein and the chart which is submitted before us indicates that the suggested sites were not accepted by the Government as an unobjectionable site. However, one site suggested by the petitioner, though appears to the Government is an unobjectionable, but by virtue of the impugned letter, the claim was made with regard to the license fees commencing from 2018-19 till date as condition precedent for granting the license in this regard.

3. Mr. P.K. Rath, learned Senior Advocate appearing for the petitioner arduously submits that admittedly the shop was closed on the basis of an order of the apex Court and since thereafter, the petitioner has not been permitted to continue with the sale of liquor as the license granted to the petitioner was not only suspended during its currency, but after its expiration, was not renewed by the authorities. He, thus, submits that the moment the Government decided not to charge any fee or duty for the period 2017-18 being conscious that the petitioner was forced to close down the license shop, it is unreasonable and irrational on the part of the Government to charge the license fees for a period commencing from 2018-19 onwards. He further submits that Section 29 of the Odisha Excise



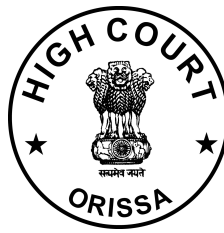
Act, 2005 postulates the excise duty or countervailing duty of any amount as the Government by notification decided to levy on all the liquors permitted to be imported, exported, manufactured, issued from any manufactory or institution or sold under the provision of the said Act which can only be applied in the event the licensee is permitted to avail all the benefits of the Act and not otherwise. He further relies upon Section 35 of the Act which contemplates the payments of the sum or a fee in consideration of the privilege granted or a minimum guaranteed quantity determined under the said Act and, therefore, the license fees can only be charged in the event of the failure on the part of a licensee to comply all the terms and conditions of a license and not in respect of the act which was beyond his control or an act done on the teeth of an order of the Court.

4. Mr. S.B. Panda, learned Additional Government Advocate appearing for the State-opposite parties opposes the petition on the score that once the statute provides the payment of the fees, there is no fetter on the part of the Government in taking shelter under the statutory provision and, therefore, charging of the arrear license fees cannot be said to be illegal and/or arbitrary. He further submits that the licensee has to adhere the terms and conditions of the license so granted and also to strictly follow the statutory provisions and, therefore, the stand of the petitioner in this regard is untenable.



5. On the conspectus of the aforesaid facts emanating from the record and the submissions so advanced by the respective counsels, the first and foremost point, which in our opinion involved in the instant case, is whether the action of the Government in charging the license fees commencing from 2018-19 onwards can be justified when the shop for which the license is granted to the petitioner, was closed in terms of the order of the Supreme Court. The cumulative effect of the reading of Sections 29 and 35 of the said Act leaves no ambiguity in our mind that a power is vested upon the State Government not only to impose duty, but also to charge the fees on selling and/or manufacturing any liquor, but also on the minimum guaranteed quantity to be lifted in a particular year.

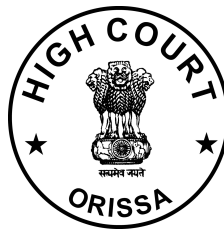
5.1. We do not find any quarrel on a bare reading of the aforesaid provisions, but, the instant case involves peculiar facts originating because of the judgment rendered by the apex Court in ***K. Balu*** (supra). The apex Court after taking into consideration the statistics submitted relating to an accident causing fatal causality at the highways and the proximity of the shops making accessible to many such commuters and/or drivers, a decision was taken that all such liquor shops should remain closed provided it is situated within 500 meters of the State highways or the National highways. In compliance of the said order, all the shops or the licenses which were granted by the authorities across pan India were closed though the license period did not expired. Subsequently, the apex Court relaxed the conditions in ***Arrive Safe Society of Chandigarh*** (supra)



and **K. Balu** (supra) where the shops situated within the municipalities or the local bodies area or a development authorities area were kept outside the purview of the said norms and a decision in this regard was to be taken by the State Government on a representation made by the individual licensees.

5.2. A distinction has to be drawn between a voluntary closure and involuntary closure. If the licensee by his own act closes the shop or does not comply the conditions enshrined therein, there is no fetter which could be seen in putting the conditions as indicated hereinabove. In case of an involuntary closure, the authorities were conscious that despite the inclination to continue with the adherence of the terms and conditions, yet the individual licensees were forced to close the shop because of the intervening orders passed by the apex Court. Being conscious of the fact, the Government did not charge any license fees or the duties for the year 2017-18 and appears to have waived such right.

6. Admittedly, in the instant case, despite the order being modified by the Supreme Court, the license was not renewed as the petitioner was compelled to shift the shop to an unobjectionable site. The record would reveal that several sites suggested by the petitioner were found by authorities to be objectionable, but one site appears to the authority as an unobjectionable site. The license was not intended to be renewed unless the license fees for the period 2018-19 onwards are liquidated and/or paid.



If the Government has taken a conscious decision to waive the license fees or the other statutory imposition provided in the statute for the period when the shop allotted to the petitioner comes within the mischief of the distance norms, we do not find any rationality and/or reasonability in the decision of the Government in charging the fees for the next year when the Government was conscious that the petitioner was not permitted to run the shop at the said site. The aforesaid observation is made by this Court only on the peculiarity of the facts involved in the instant case and, therefore, should not be treated as a precedent to operate omnibusly.

7. Considering the plight that the petitioner is still prevented from operating the licensed shop, we, hereby, quash and set aside the impugned letter dated 22nd August, 2022 (Annexure-1) to the extent of charging the license fees on and from 2018-19. The authority is directed to immediately take a decision as reflected in that order for renewing the license at the unobjectionable site suggested by the petitioner and communicate the same within two months from the date of the communication of this order.

8. The writ petition is, thus, disposed of. In view of the disposal of the instant writ petition, the interim order passed in the instant writ petition is merged with this order.

(M.R. Pathak)
Judge

(Harish Tandon)
Chief Justice

S.K. Guin/ PA