

A.F.R.

HIGH COURT OF ORISSA: CUTTACK

W.P.(C) No.30554 of 2011

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Laxmi Charan Patra, aged about 32 years,
S/o. Shyam Sundar Patra,
At: Jiura, Via: Pattapur,
P.O. Gangapur, P.S. Pattapur,
Dist: Ganjam
and others

... Petitioners

-Versus-

State of Orissa & Others

... Opp.Parties

For Petitioners : Mr. Milan Kanungo

For Opp. Parties : Mr. D. Panda,
Addl. Govt. Advocate

Mr. B. Pujari
(For O.P. Nos.5 & 6 Intervenor)

P R E S E N T:

**THE HONOURABLE THE CHIEF JUSTICE SHRI.V.GOPALA GOWDA
AND**

THE HONOURABLE SHRI JUSTICE B.N.MAHAPATRA

Date of Judgment: 27.03.2012

B.N. Mahapatra, J. This writ petition has been filed with a prayer to quash the notice dated 17.11.2011 (Annexure-6) issued by opposite party No.3-Collector, Ganjam for settlement of an IMFL 'OFF' Shop at Singipur through lottery. Further prayer of the petitioners is for issuance of a direction to close down the opening of IMFL 'OFF' Shop in that locality.

2. The petitioners' case in a nutshell is that opposite parties-authorities are processing to open a new IMFL 'OFF' Shop at Singipur

under Pattapur Police Station and Digapahandi Excise Charge of Ganjam District through lottery for the remaining period of 2011-12 in gross violation of the statutory provisions of law and completely ignoring the objections raised by the local inhabitants of Singipur, Sarpanch and Chairman of the concerned area. According to the petitioners, Singipur is a very small village in the rural underdeveloped pocket of Ganjam District with majority of people belonging to BPL category, S.C. Community and labour class.

3. Petitioner No.1 is an inhabitant of Jiura village of Sanakhemundi Block and at present the Chairman of Sanakhemundi Panchayat Samiti in which IMFL OFF Shop in question is proposed to be opened with location at Singipur. Petitioner Nos. 2 and 3 are the inhabitants of Singipur village and are actively engaged in social service by rendering all humane assistance to the people who are socially, economically and educationally down-trodden in that locality. The Sub-Inspector of Excise, Digapahandi being directed by opposite party no.4-Superintendent of Excise, Berhampur after making proper inquiry submitted a proposal on 16.05.2011 for opening of two IMFL 'OFF' Shops, one at Sidheswar Panchayat Headquarters and another at Chandapur Panchayat Headquarters of Digapahandi Charge for the remaining period of the year 2011-2012 on the basis of the feasibility, population and demand of the area. Petitioners' area was not selected for opening of new IMFL 'OFF' Shop. However, opposite party no.4 proposed to open an IMFL 'OFF' Shop at Singipur on the ground of raising revenue to achieve the annual target of Rs.47.00 Crores of excise revenue fixed for

the District for the year 2011-2012. Accordingly, Collector, Ganjam published public notice in Form-A inviting objection from persons residing within the local area by 21.06.2011 against opening of exclusive privilege of selling in retail IMFL/ Beer (IMFL OFF) Shop at the locality for the year 2011-12. In response to the said notice, about 100 persons including petitioner No.2 filed objection vehemently opposing the proposal for opening of IMFL 'OFF' Shop. The local Sarpanch has also filed an objection opposing the same.

4. Petitioner No.1, who is a peoples' representative also filed an objection before the Collector to drop the proposal for opening of IMFL 'OFF' Shop in the interest of public at large as Singipur village is predominated by BPL Category, S.C. Community, Labour class, who are socially, economically and educationally backward and that there is neither feasibility nor ascertained demand for any such article. Pursuant to the said objections, the Inspector, Excise, Chikiti made an inquiry into the matter and in his report submitted that neither the Sarpanch nor the people of the locality wants opening of the proposed shop in their village. In his report, he also referred to a news item dated 13.07.2011 in the Odia daily newspaper "Dharitri" wherein the public resentment against the proposal was published.

5. Mr. M. Kanungo, learned counsel appearing on behalf of the petitioners submitted that the proposal to open IMFL 'OFF' Shops at Sidheswar and Chandapur was initiated by the Charge Sub-Inspector of Excise, Digapahandi after his field verification. But at the instance of opposite party No.4- Superintendent of Excise, Berhampur, Inspector of

Excise, Chikiti has suggested for opening of IMFL 'OFF' Shop at Singipur with his opinion that the area has got a very good potentiality for opening of IMFL 'OFF' Shop as there is no other IMFL 'OFF' Shop in the area except Digapahandi IMFL 'OFF' Shop. It was submitted that while public notice at Annexure-2 was issued in respect of the shops at Singipur and Turubudi, the proposed Turubudi IMFL 'OFF' Shop was dropped on the ground of public objection and opening of IMFL 'OFF' Shop at Singipur was proposed to the Government for sanction without considering the objections raised by the local residents, Sarpanch and the Chairman of the local Block, Sanakhemundi. The State Government in Excise Department vide Memo No.5236 dated 04.11.2011 communicated the sanction without taking into consideration the objections raised by the local public at Annexure-3 series and without any application of mind to the initial proposal and feasibility report received from the Charge Sub-Inspector of Excise, Digapahandi. It was submitted that Singipur is an underdeveloped village where most of the residents belong to BPL category, S.C. Community and labour class. The economic condition of the village is far from satisfactory and the percentage of literacy particularly of the women segment and youth is quite disheartening. The people both men and women depend on daily wage and small scale agriculture. There is a branch of out-still liquor shop at a distance of 500 metres from the village. There is already wide spread discontentment and public unrest on account of operation of the said branch out-still liquor shop and if an IMFL 'OFF' Shop is opened, people of that locality will automatically be highly affected by consuming foreign liquor which would

ruin their financial condition. Non-consideration of the objections and giving permission on the sole ground of getting more revenue is nothing but a caricature of the provisions of the law and aims and object of the constitutional goal. When one shop at Turubudi has been dropped because of public objection, there is no reason as to why the proposal to open IMFL 'OFF' Shop at Singipur on the same ground of objection would not be dropped. There was no justification to open a shop in question at Singipur. There are also schools, temples, bathing ghat and S.C./S.T. category inhabitants, clustered situated in all around the shop in question where it is proposed to be opened. Unless the proposal for opening of IMFL 'OFF' Shop is dropped, the people of that locality will suffer irreparable loss.

6. Mr. D. Panda, learned Additional Government Advocate appearing on behalf of opposite party Nos.1 to 4 submitted that as per the provisions contained in Sections 22 and 30 to 34 of the Bihar and Orissa Excise Act, 1915 (for short, "Act, 1915") and basing on the feasibility and demand for foreign liquor in the locality of Singipur, public notice vide Office Letter No.1220/Ex.dated 06.06.2011 (Annexure-2) in Form No. A was issued inviting objection, if any, from the local people against opening of new IMFL 'OFF' Shop outlet at Singipur. In response to such notice objections were received from the Sarpanch, Singipur as well as from the local people. It was submitted that during the last conference of the Superintendents of Excise in presence of the Secretary to Government of Odisha, the Excise Department and the Excise Commissioner, Odisha, collection target of excise revenue has been fixed

at Rs.47 crores for Ganajm district for the year 2011-12 and this could be achieved only by opening of new IMFL 'OFF' Shop basing on the demand and feasibility of new shops in question to operate in vacuum areas. Therefore, the District Administration decided to open seven numbers of new IMFL 'OFF' Shops in Ganjam District and notice was published. Before inviting objections, a meeting comprising all Charge and Range Officers was held under the Chairmanship of Hon'ble Minister of Excise to identify suitable areas for opening of new IMFL 'OFF' Shops in different areas in the district of Ganjam and accordingly Singipur was proposed instead of Chandapur/Sidheswar as submitted by the Charge Officer. The objections received from different quarters were duly enquired into and since the objections are general in nature and excise violation cases have been registered by the Excise Staff, the proposed shop at Singipur was decided to be opened to curb sale of illicit liquor and boot legging resulting in revenue loss to the Government.

7. The further case of opposite parties-authorities is that the nearest IMFL 'OFF' Shop from the proposed location at Singipur is at Digapahandi which is more than eight kilometres away from Singipur. The Inquiry Officer's report reveals that the area has got a very good potential for opening of new IMFL 'OFF' Shop as there is no other shop except Digapahandi IMFL 'OFF' Shop. The Collector after examining the objections and the inquiry report has finalized the list of shops proposed to be opened acting under Section 34(1)(2) of the Act, 1915 before sending his recommendations to the Government for sanction. The proposed shop is located from a safe distance from the educational

institutions and places of worship as well as far away from local residential and labour colony. It is further submitted that in the A.G. Audit for the year 2010-11 it has been remarked that the number of licence should be increased in respect of IMFL 'OFF' Shops, which have been lifting more than their allotted quotas of foreign liquor. Since the only IMFL 'OFF' Shop functioning at Digapahandi NAC in the entire Digapahandi Charge area has been lifting double of its monthly quota of FL/Beer each month, it was decided to recommend for opening of another IMFL 'OFF' Shop and thus, Singipur IMFL 'OFF' Shop has been proposed for 2011-2012 to plug the revenue leakage. The opening of new excise shop for selling of IMFL 'OFF' in the area will result in loss of earning for the existing licensee of the IMFL 'OFF' shop at Digapahandi at whose behest, in all probability, this public interest litigation has been engineered.

8. Mr. Panda further submitted that as provided under Rules 3 and 4 of the Orissa Excise (Exclusive Privilege) Foreign Liquor Rules, 1989, all the objections along with the inquiry report were sent to the Government through the Excise Commissioner, Odisha, Cuttack for consideration and accordingly, the Government have, after due consideration, sanctioned the Singipur IMFL 'OFF' Shop along with five other IMFL 'OFF' Shops to be opened for remaining period 2011-2012. The lottery of Singipur IMFL 'OFF' Shop was held on 29.11.2011 and one Sri Ajit Kumar Sahu has been declared as the lottery winner of Singipur IMFL 'OFF' Shop but license has not been issued to him in compliance with the interim orders of this Court. Since Singipur IMFL 'OFF' Shop

has been settled @ Rs.60,000/- per month, the non-issuance of licence is causing loss of Government revenue to the tune of Rs.3,18,000/- per month in shape of licence fee and duty.

9. Petitioner No.1-Laxmi Charan Patra, who is the Chairman of Sanakhemundi Block under Ganjam District being authorized by other petitioners filed a rejoinder affidavit stating therein that the opposite parties in their counter affidavit have made some false averments. Placing reliance upon Annexure-7 it is stated that Digapahandi IMFL 'OFF' Shop is lifting 5% to 8% excess of MGQ fixed against his licence for the last two years. Further no excise case has been detected in respect of petitioners' village. Opposite party-corporation may be called upon to produce the consumption report of the nearby IMFL 'OFF' Shop holder so also the record showing institution of excise cases for sale of illicit liquor in the petitioners' village as stated in the counter affidavit filed on behalf of opposite party Nos.1 to 4 based upon which report, Singipur village has been selected for opening of new IMFL 'OFF' Shop. Since the villagers of the petitioners are supporters of the present Congress M.L.A., their village has been selected by excluding the name of other villages like Chandapur and Sidheswar. The petitioners being the representatives of the local people have come forward to protect the interest of the poor villagers and filed the present writ petition.

10. Mr. B. Pujari, learned counsel appearing for opposite party Nos.5 and 6-intervenors submitted that in response to notice dated 17.11.2011 (Annexure-A/1), the intervenors applied for grant of IMFL 'OFF' Shop licence for the remaining period for the year 2011-12. Along

with the application the intervenor petitioners deposited a sum of Rs.25,000/- only as non-refundable fees and the consideration money of Rs.1,80,000/- by way of Bank Draft and other required documents and the intervenors-petitioners have also paid advance money to the land owner to purchase a piece of land of 900 sq. ft. The intervenors-petitioners have spent a huge amount of money to obtain solvency certificate, sales tax clearance, income tax return, PAN Card and other relevant documents, as the same are required to be deposited along with the application form.

On 29.11.2011 in terms of the notification, practice and law, the lottery was drawn by opposite party No.3-Collector, Ganjam in presence of 51 applicants and on the basis of the result thereof the intervenors-petitioners were selected to be issued with the licence for the period 2011-2012. However, licence was not issued in view of order dated 23.11.2011 passed by this Court in Misc. Case No.17987 of 2011 arising out of W.P.(C) No.30554 of 2011. Thus, the intervenors-petitioners supporting the stand taken by opposite party Nos.1 to 4 prayed for dismissal of the writ petition.

11. On the rival factual and legal contentions advanced by the parties, the only question that falls for consideration by this Court is as to whether the opposite parties-State authorities are justified to take a decision for opening of IMFL 'OFF' Shop at Singipur despite the objections raised by the inhabitants of Singipur village, the Sarpanch of Singipur Grama Panchayat and the Chairman of Sanakhemundi Panchayat Samiti.

12. Facts which are not in dispute are that in response to notice issued by opposite party No.3-Collector expressing the intention of the State Government for grant of exclusive privilege of IMFL/ Beer (IMFL OFF) Shop at Singipur, the inhabitants of Singipur village, the Sarpanch of Singipur Grama Panchayat and the Chairman of Sanakhemundi Panchayat Samiti filed their objections vide Annexure-3 series.

13. The villagers of Singipur village in their letter of objection sent to the concerned District Magistrate indicated that more than 70% people of the total population are farmers and daily labourers. The financial condition of almost all the people of the area is very weak. If the IMFL 'OFF' shop is opened, the inhabitants of the village will be highly affected by consuming foreign liquor which will not only make the financial condition of the people miserable, but also create discontent in every family which will ultimately ruin the family life of the inhabitants of the locality.

14. The Sarpanch of Singipur Grama Panchayat also sent a letter of objection to the District Magistrate requesting not to open the proposed IMFL 'OFF' shop in Singipur village on the ground that most of the people of Singipur village are small farmers and daily labourers. Almost every year the agriculture of the area is being affected by heavy rainfall for which the financial back-bone of the villagers has been ruined. In the circumstances, opening of IMFL 'OFF' shop by the Government will make the life of the villagers more miserable.

15. The Chairman of the concerned Panchayat Samiti wrote objection letter to the District Magistrate, Ganjam, Chhatrapur stating

therein that opening of IMFL 'OFF' shop in the area will destroy the family life of the innocent village people. Most of the people of Singipur are gentle, innocent and illiterate. They depend on daily wages. The people of the village also work under the Mahatma Gandhi National Employment Guarantee Scheme. They manage their family out of their daily wages. If the proposed OFF Shop is opened in the said village, the people of that village will be highly affected by consuming foreign liquor and gradually they will be accustomed to drinking. As a result, they may not be able to manage their family and ultimately their family life and education of children will be in jeopardy.

16. The opposite parties- authorities tried to justify their action for opening of IMFL 'OFF' Shop at Singipur basically for the following reasons:

- (i) to achieve the annual collection target of excise revenue fixed at Rs.47 crores for Ganjam District for the year 2011-2012 by opening new IMFL 'OFF' Shops in vacuum areas based on the demand and feasibility of new shops,
- (ii) to plug sale of illicit liquor which causes liquor tragedy and some excise cases have been detected,
- (iii) to provide pure liquor to the people,
- (iv) the only IMFL 'OFF' Shop functioning at Digapahandi NAC in the entire Digapahandi Charge area has been lifting double of its monthly quota of FL/Beer each month, which shows the demand of foreign liquor in the locality.

17. Undisputedly, the people of Singipur village as well as the representatives of the people i.e. the Sarpanch of Singipur Gram Panchayat and the Chairman of Sanakhemundi Panchayat Samiti raised objections against opening of IMFL 'OFF' Shop at Singipur.

18. Chapter-IX of the Constitution envisages a three-tier system of Panchayats, i.e.,

- (i) The village level;
- (ii) The District Panchayat at the district level; and
- (iii) The Intermediate Panchayat which stands between the village and district Panchayats in the States.

Under Article 243-G, all the three levels undertake the implementation of programmes of economic development and social justice for the needy people of the area.

19. At this juncture, it is beneficial to refer to the judgment of the Hon'ble Supreme Court in the case of **State of U.P. and others vs. Pradhan Sangh Kshettra Samiti and others etc.**, AIR 1995 SC 1512, wherein the Hon'ble Supreme Court held as under:

"2. The provisions of Article 40, to give effect to which the 73rd Constitutional Amendment was effected read as follows:

"40. *Organisation of village panchayats.*— The States shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government."

The aforesaid provisions neither define 'village' nor give guidelines for organising village panchayats. All that they require is that the village panchayats, howsoever organised, have to be equipped with such powers and authority as may be necessary to enable them to function as units of self-government. There

is, however, no doubt that when the article speaks of village panchayats as units of self-government, it has in view the organisation of the lowest level units of self-governance in the hierarchy of self-governing, democratic, policy-making and administrative units. In other words, the village panchayats are envisaged by the article as the base democratic institutions of a pyramid of the democratically organised and functioning self-governing units. This being so, while organising the village panchayats, what is necessary to be kept in mind is (a) that they are to be the self-governing units at the lowest end of the democratic polity, (b) that being self-governing units, those who are governed by the said units and for whose benefit they are going to operate, will have either a direct or an elective indirect representation in them; (c) that they will have an effective say in the conduct of their affairs including its plans, policies and programmes and their execution and (d) that thus they will have not only a sense and satisfaction of participation but also an experience in the governance of their own affairs. So long as the village panchayats are organised to achieve the said objectives, the requirements of the said Article will have been complied with both in their spirit and in letter."

(underlined for emphasis)

20. In view of the above constitutional provisions, the State Government in the matter of granting exclusive privilege to any person is bound to honour the will of the people and representative of the people. The will of the people must prevail over the intention of the Government for grant of exclusive privilege for any consideration in a particular area.

21. Section 22 of the Act, 1915 provides for grant of exclusive privilege of manufacture and sale of country liquor or intoxicating drugs. Under Sub-section 1(a) of Section 22, the State Government is empowered to grant any person on such condition, if any, for such period as it may think fit the exclusive privilege for retail sale of foreign liquor within any specified place.

The proviso to Section 22(1) provides that the public notice shall be given of the intention to grant any such exclusive privilege and that any objection made by any person residing within the area affected shall be considered before the exclusive privilege is granted. Similarly, Rule 3 of the Orissa Excise (Exclusive Privilege) Foreign Liquor Rules, 1989 provides that a public notice shall be issued by the Collector on behalf of the State Government in the prescribed Form and in the manner specified therein, before granting any exclusive privilege to any person in retail sale of foreign liquor giving 15 days time for receiving objections. Rule 4 of the said Rules, provides for consideration of objections and final decision. Calling for objections from the public before granting of exclusive privilege is not an empty formality.

22. In the instant case, objections have not been raised by any individual/person but objections have been raised by 100 of inhabitants of the village more particularly, the people's representatives of Singipur Grama Panchayat like Sarpanch and the Chairman of Sanakhemundi Panchayat Samiti against opening of IMFL OFF shop at Singipur. Pursuant to the objections filed, inquiry was conducted into the matter through the Inspector of Excise, Chikiti, who submitted his report indicating therein that neither the inhabitants of the village nor the Sarpanch are in favour of opening of the proposed liquor shop in Singipur. In his report, the Excise Inspector has also drawn attention of the authorities to a news item dated 13.07.2011 in the Odia daily newspaper "Dharitri" wherein the public resentment against the proposal was voiced. No valid reason has been assigned by the opposite parties-

authorities for not accepting the objection raised by the inhabitants of Singipur village, Sarpanch of Singipur Grama Panchayat and the Chairman of Sanakhemundi Panchayat Samiti which has been supported by the report of Inspector of Excise, Chikiti.

23. Needless to say that if the objections raised by the people's representatives are not accepted, then the very system of Local Self Governance enshrined in the Constitution will be an illusion. The object of achieving target of revenue collection cannot be a ground for opening of IMFL OFF shop in a particular locality. Such a criterion will certainly vitiate the decision making process. The will of the local people as well as the will of the representative of the people in the local self Government is sovereign and prevail over any consideration for opening of IMFL OFF shop in a particular location. Further before taking a final decision in the matter of selection of any particular area for grant of licence for IMFL OFF shop, relevant provisions of law vis-à-vis the objections of the local people to such opening have to be taken into consideration on proper perspective.

24. It is the bounden duty of the Govt. to ensure Rule of Law in the society. It should take effective adequate steps to check/prevent sale of spurious liquor which causes liquor tragedy resulting loss of lives of innocent people. Govt. cannot take advantage of its own inaction, laches and failure to prevent sale of such spurious liquor. Both State Govt. and Central Govt. spend huge amount for betterment and up-liftment of poor, less advantaged, down trodden people and for them various social, beneficial legislation have been enacted, schemes have been framed.

Therefore, in the name of raising revenue, the welfare of those people should not be lost sight of.

25. It is common knowledge that on functioning of liquor shop in rural and slum areas, a substantial portion of earning of inhabitants of that area goes towards consumption of liquor which adversely affects the health and financial condition of such inhabitants and ruins their family life. Therefore, where the inhabitants and the people representatives oppose to the opening of liquor shop in the concerned areas, the Govt. must refrain from opening of liquor shop in that area for any other consideration.

26. Apart from the above, while both the Central Government and State Government are spending huge amount for upliftment and betterment of the poor and down-trodden people, opening of IMFL 'OFF' Shop despite objections raised by the local people, the Sarpanch of the Grama Panchayat and the Chairman of the concerned Panchayat Samiti to raise revenue for the purpose of achieving the annual collection target of Excise Revenue is wholly unjustified and impermissible. Moreover, even assuming that there is sale of spurious liquor, the Government should take effective measures to plug sale of spurious liquor to prevent the liquor tragedy in stead of taking recourse to the solution by opening of IMFL liquor shop in the locality against the will of the public.

27. Now-a-days many voluntary organisations are taking leading part for upliftment of poor down trodden, less privileged person. Various remedial measures are taken to remove illiteracy from those sections of the society. In such background, if the will of the local inhabitants is

not given due importance and the same is thrown to air and the Govt. proceeds to grant privilege licence to open liquor shops in the area concerned only for the purpose of achieving financial target, this is certainly unfortunate and against the object enshrined in the preamble of the Constitution of India. Needless to say, that all the laws and different schemes are introduced for welfare of the society and benefit of the people at large. By opening liquor shops in different parts of the State against the will of the people is certainly not an ideal intention to achieve the noble object avowed in the Constitution.

28. The Hon'ble Supreme Court in ***Ashok Lenka vs. Rishi Dikshit & Ors., AIR 2006 SC 2382*** held that the State in making the rules and formulating the policy decisions must be guided by public interest. In such matters, the State has a positive obligation to ensure that any activity contemplated, strictly conforms to the requirements of public good and is not otherwise derogative of public health. The State parts with its exclusive privilege on certain statutory conditions such as payment of excise fee. When it lays down criteria for selection of persons who would become qualified for grant of licence under the Act, not only the eligibility criteria therefor should be laid down, but having regard to his past experience as to how and in what manner, the licensees find means and methods to circumvent the said provisions, all endeavours should be made to plug all loopholes. The State has got an extremely solemn obligation to the people to fulfil in that behalf and it has to frame its Policy and Rules. All information supplied by the applicants for licences, thus, must undergo and satisfy the 'strict scrutiny test'. The

State should not treat its right of parting with its privilege only as a means of earning more and more revenue. It may certainly earn revenue only upon fulfillment of its constitutional and statutory obligations. There exists a strong underlying notion of public health and welfare when the matter comes to retention of the exclusive privilege and/or parting therewith either in whole or in part.

29. At this juncture, it is necessary to refer to Article 47 of the Constitution of India, which reads thus:

“The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.”

While 1st part of the article refers to public health, the 2nd part specifically refers to prohibition of consumption of liquor.

30. The Hon’ble Supreme Court in the case of **Ashok Lenka** (*supra*), held as under:

“34. In view of Article 47 of the Constitution, indisputably, public health in society plays a vital role. By the said expression, the makers of the Constitution refer both to the goal of health of the public and the attending promotion of healthy practices.

35. Prohibition of liquor was, thus, inserted as part of public health. Strict control was contemplated and it was made necessary. This in turn would require that while granting licence the statutory committees and other authorities must resort to strict scrutiny of the applications.....”

31. Therefore, under no circumstances, on the consideration of supply of pure liquor, Government should open IMFL 'OFF' Shops in Singipur village against the will of the people of that village which is sovereign.

32 The other reason given by the opposite parties is that in the entire Digapahandi Charge only one IMFL OFF Shop at Digapahandi NAC is functioning and the same has been lifting double of its monthly quota each month which shows demand of foreign liquor in that locality. For the reasons stated above, this cannot be a good ground to open IMFL OFF Shop in Singipur. Moreover, petitioner no.1, who is the Chairman of the concerned Panchayat Samiti, in his rejoinder affidavit dated 8.1.2012 stated that the consumption report of the nearby shop holder of the petitioners' village i.e. Digapahandi IMFL 'OFF' Shop reveals that it has lifted 5% to 8% excess of its quota for the last two years. Therefore, petitioners strongly denied one of the reasons given by the opposite parties-authorities that the IMFL OFF Shop at Digapahandi is lifting double than the monthly quota allotted to the said shop. Similarly, another reason given by the opposite parties-authorities that there are excise cases which have been instituted for sale of illicit liquor in the petitioners' village has also been completely denied by the petitioners in their rejoinder affidavit. There is no denial to this assertion of the petitioners by the opposite parties-authorities and they have also not furnished the detail particulars of excise cases, if any, with case number and name of the parties etc. for perusal of this Court.

33 In view of the above, the decision taken by the Govt. to open IMFL Off Shop in Singipur is not sustainable in law. Consequently issuance of Annexure-6 is also bad in law.

34 In the facts situation, the writ petition is allowed. Notice dated 17.11.2011 (Annexure-6) issued by opposite party No.3-Collector, Ganjam is hereby quashed.

Interim order dated 23.11.2011 is made absolute.

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B.N.Mahapatra, J.

V. Gopala Gowda, C. J. *I agree.*

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Chief Justice