

**A.F.R.**

**HIGH COURT OF ORISSA: CUTTACK**

**W.P.(C) No. 5331 of 2011**

In the matter of an application under Article 226 of the Constitution of India.

-----  
Tarini Sandhibigraha,  
S/o- Panchanan Sandhibigraha,  
Village- Belampur,  
P.O./Dist: Jajpur.

... Petitioner

-Versus-

State of Orissa and others

... Opp. Parties

For Petitioner	:	M/s. Kamal B., Panda, P.K. Shahoo
For Opp. Parties	:	Addl. Govt. Advocate (For O.P.No.1) M/s. Narasingha Patra, A.K. Patra & B.N.Shadangi (For O.P.No.3)

-----  
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:28.03.2012

---

**B.N.MAHAPATRA,J.** This writ petition has been filed with a prayer to quash the order of the State Government dated 10.02.2011 (Annexure-4) by which the Additional Secretary to Government of Orissa in Excise Department communicated to the Excise

Commissioner, Orissa, Cuttack that Government after careful consideration have been pleased not to approve the proposal sent vide letter No.9039 dated 27.12.2010 for sanction of Beer Parlour “ON” licence in favour of Shri Tarini Sandhibigraha over Plot No. 600/794, Khata No. 197/29, Mouza Sanapatuli under Korei P.S. in the district of Jajpur for the remaining period of 2010-11 as the same is not feasible in view of the existence of prohibitive sites under Rule 34 of the Orissa Excise Rules, 1965 urging various facts and legal contentions. The further prayer of the petitioner is to issue a writ in the nature of mandamus directing the opposite parties to consider the application of the petitioner for grant of Beer Parlor “ON” Licence afresh.

2. Petitioner’s case in a nutshell is that his application made before opposite party no.2-Collector, Jajpur for grant of beer parlour “ON” shop licence over plot no.600/794, Khata No. 197/29, Mouza Sanapatuli under Korei P.S. in the district of Jajpur was duly considered by opposite party no.2, who after following due procedure had forwarded the application to the State Government for passing of necessary orders. While the application of the petitioner was pending before the State Government, opposite party no.3 filed W.P.(c) No. 381 of 2011 in the garb of Public Interest Litigation before this Court challenging the recommendation made by opposite party no.2 to the

State Government for sanction of the beer parlour “ON” shop licence in favour of the petitioner raising various allegations against the State authorities. This Court vide order dated 13.01.2011 passed in Misc. Case No. 266 of 2011 arising out of said PIL directed opposite party no.2-Collector to take steps for measurement of the distance between the new beer parlour ‘ON’ shop which is going to be opened at Sanapatuli under Dhaneswar Grama Panchayat and the bathing ghat with the assistance of competent Engineers of Works Department and submit a report before this Court for consideration of the interim prayer. This Court further ordered that if any licence has not been issued for opening of the proposed new beer parlour ‘ON’ shop at Sanapatuli under Dhaneswar G.P., the same shall not be issued till the next date. Pursuant to the said order of this Court dated 13.1.2011, opposite party no.2 deputed the Executive Engineer of Panikoili (R&B) Division to take necessary measurement. The said Executive Engineer prepared a free hand-sketch map showing the distance of different restricted places from the proposed beer parlour and submitted a report as per measurement taken by him to the opposite party no.2 vide letter dated 20.01.2011. Basing on the measurement taken by the Executive Engineer as per Annexure-3, the State Government vide its order dated 10.2.2011 rejected the proposal for sanction of the beer parlour ‘ON’ shop licence in favour of the

petitioner. W.P.(c) No.381 of 2011 filed by opposite party no.3 in the nature of PIL was taken up by this Court on 23.2.2011 and on that date a copy of the order of the Government passed under Annexure-4 was produced before this Court. On the basis of Annexure-4 this Court disposed of the writ petition with an observation that there was no need for this Court to examine the claim of the petitioner any further as the Government is not inclined to grant licence in favour of the petitioner (O.P.No.3 in PIL) for the area in question. Hence, the writ petition.

3. Mr. K.B. Panda, learned counsel appearing on behalf of the petitioner submitted that the measurement taken and recorded by the Executive Engineer was not done as per sketch. The same has been prepared without verifying the mouza of the area. Mr. Panda further submitted that Annexure-4 which has been passed solely on the basis of the free hand-sketch map of the area prepared by the Executive Engineer is illegal, arbitrary and passed without proper application of mind. The hand-sketch map prepared by the Executive Engineer is in total contrast to the ground realities and the allegations that were made in the PIL. The free hand-sketch map is prepared bereft of any plot number and refers to pond, flour mill, SC & ST Labour colony and residential college. There is no bathing ghat over Plot no.241 corresponding to Khata No.76 which is a private land

belonging to one Gopal Charan Mallick. Plot No.606 does not have a Flour Mill, but a show-room besides the High-way. There is no college over plot no.179 which is at a distance of 580 metres from the proposed site. The Siva Temple at plot no.130 is at a distance of 720 metres from the proposed site. There is no SC & ST Labour colony over plot no.212, but there are only two unauthorized huts. Although there is mention of bathing ghat in the PIL filed by the opposite party no3, the Executive Engineer reported that there is a pond across the High-way.

4. Mr. Panda further submitted that Maa Tarini IMFL 'ON' shop is located within a distance of 140 metres of recognized and approved Government bathing ghat situated over Plot No.1261 and is at a distance of 240 metres from the petitioner's proposed site to open the beer parlour 'ON' shop. Opposite party no.3 had filed the PIL with a vested interest. If an IMFL 'ON' shop can operate in the same vicinity within 140 metres of an approved bathing ghat, there is no reason to reject the application of the petitioner for being granted licence of a beer parlour 'ON' shop. Thus the decision of the State Government taken under Annexure-4 is discriminatory, arbitrary and illegal. Further the said PIL has been filed suppressing various material facts. Opposite party no.3 had filed the writ petition bearing W.P.(c) No. 381 of 2011 as a self styled social worker, but in fact he

was acting as an Agent of the owner of one Hotel 'Maa Tarini IMFL 'ON' shop located in the same vicinity. Placing reliance upon the decision of this Court in *Villagers of Jarasingh Basantinath Dutta v. State of Orissa and others*, AIR 1997 Orissa 163, Mr. Panda submitted that Public Interest Litigation which has now come to occupy an important field in the administration of law should not be public interest litigation for private interest litigation. There must be real and genuine public interest involved in the litigation and it cannot be invoked by a person or a body of persons to further his or their personal causes or satisfy him or his personal grudge or enmity. The Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extra-ordinary jurisdiction. Concluding his arguments, Mr. Panda prayed to allow the prayer made in the writ petition.

5. Learned Addl. Government Advocate appearing on behalf of opposite party no.2 submitted that from the report of the Executive Engineer (R&B) , Panikoili it reveals that several restricted places exist within 500 metres and the proposal is violating the Rule 34 of the Orissa Excise Rules, 1965. After careful consideration of the report of Executive Engineer, Panikoili, the Government have been pleased not to approve the proposal for sanction of beer parlour 'ON' shop licence at Sanaputli in favour of the petitioner for the remaining period

2010-11. The writ petitioner in W.P.(c) No. 381 of 2011, who is opposite party no.3 in the present writ petition, is one Alok Kumar Mohanty, who is the Secretary, CPI, Jajpur District Council, Secretary of Korei Anchalik Committee and President of Industrial Labour Association, Vyasanagar as reflected in the objection filed by him on 12.4.2010 against the proposed beer parlour in response to the Form-A, Public Notice. There is no such report/complaint about connivance of Sri Alok Kumar Mohanty, opposite party no.3 or existence of any recognized and Govt. approved bathing ghat within 140 metres distance from the existing ON shop, Sanapatuli. The Government has not sanctioned the proposed beer parlour 'ON' shop licence at Sanapatuli for the remaining period 2010-11 in favour of the writ petitioner for violation of Rule 34 of the Orissa Excise Rules, 1965 and the decision of the Government in this regard is final. Therefore, there is no question of reconsideration of application of the petitioner for grant of beer parlour in question afresh.

6. Mr. N. Patra, learned counsel appearing on behalf of opposite party no.3 submitted that since under Annexure-4 Government has not approved the proposal for sanction of beer parlour 'ON' shop in favour of the petitioner in Mouza Sanapatuli for the remaining period 2010-11 in view of existence of the prohibitive site under Rule 34 of the Orissa Excise Rules, 1965 and by efflux of

time the writ petition has become infructuous, the writ petition should be dismissed as such.

7. On the rival contentions of the parties, the following questions fall for consideration by this Court:

- (i) Whether in the facts and circumstances of the case, the petitioner is entitled to grant of reliefs claimed in the writ petition?
- (ii) What order?

8. In the writ petition the petitioner has made two prayers i.e. to quash the decision taken by the Government under Annexure-4 to the extent not approving the proposal for opening of beer parlour at Sanapatuli; secondly for a direction to opposite parties to consider afresh the application of the petitioner for grant of beer parlour 'ON' shop licence afresh.

9. Under Annexure-4 the Government had not approved the proposal for sanction of beer parlour 'ON' shop licence in favour of the petitioner at Sanapatuli for the remaining period 2010-11 on the ground of existence of prohibitive sites mentioned under Rule 34 of the Orissa Excise Rules, 1965.

10. The relief sought for quashing Annexure-4 cannot be granted for the following reasons:

- (a) There is existence of restricted places for the proposed beer parlour 'On' shop at Sanapatuli which is violative of Rule 34 of



the Orissa Excise Rules, 1965. The State Government in paragraph 9 of its counter affidavit stated that as per measurement report of the Executive Engineer (R&B), Panikoili, the following restricted places exist within 500 metres surrounding the proposed beer parlour ;

<u>Name of the Units</u>	<u>Distance reported by the Executive Engineer.</u>
1. U.P. School	293 Mtrs.
2. Siva Temple	477 Mtrs.
3. ST/SC Labour Colony	255 Mtrs.
4. Pond	145.20 Mtrs.
5. Flour Mill	55.50 Mtrs.

-

On the basis of the above report, the Government has disapproved the proposal for sanction of beer parlour 'ON' shop in favour of the petitioner under Annexure-4. Perusal of Annexure-4 further reveals that the Government has issued direction to initiate disciplinary action against the erring official Abhaya Panjar Sahoo, Inspector of Excise, Jajpur, who has furnished false and misleading information putting the Government into embarrassment. The Excise Commissioner, Orissa, Cuttack, the Excise Deputy Commissioners and the Collectors have been advised under Annexure-4 to scrutinize such proposal thoroughly before endorsing it to Government for approval.

(b) By efflux of time the period of 2010-11 for which the proposal for opening of new beer parlour 'ON' shop has been disapproved by the Government is already over.

11. In the facts and circumstances, the decision of this Court passed in ***Villagers of Jarasingh Basantinath Dutta*** (supra) is of no help to the petitioner.

12. In view of the above, we do not find any infirmity or illegality in the order passed by the Government dated 10.2.2011 under Annexure-4 warranting interference of this Court.

13. So far as the petitioner's other prayer for issuance of a direction to the opposite parties to re-consider his application for grant of Beer Parlour 'ON' licence afresh is concerned, Mr. Panda, vehemently argued that though Maa Tarini IMFL 'ON' shop is located within a distance of 140 Metres of recognized and approved Government bathing Ghat over Plot No.1261 and at a distance of 240 Metres from the petitioner's proposed site, the opposite parties illegally permitted him to run the IMFL 'ON' Shop.

14. We find in paragraph 10 of the counter affidavit filed by opposite party no.2, it is stated as follows :

“.....It is a fact that at the same place, Sanapatuli under Dhaneswar G.P. where the instant Beer Parlour proposed, there is an another IMFL 'ON' Shop in the name and style as 'Maa Tarini IMFL ON Shop' functioning at a distance of 250 metres since 15.12.2007...”

15. In view of the above admitted fact, we are unable to appreciate the action of the State Government in allowing 'Maa Tarini IMFL 'ON' Shop to run at the same place and refusing /disapproving

the proposal for sanction of beer parlour 'ON' shop in favour of the petitioner. Such discrimination is impermissible.

16. Law is well settled that every action of the State and its instrumentality should be fair, legitimate and above board and without any affection or aversion (See the decisions in ***E.P. Royappa v. State of Tamilnadu***, AIR 1974 SC 555; ***State of Andhra Pradesh and another v. Nalla Raja Reddy***, AIR 1967 SC 1458.

17. In ***M/s. Erusian Equipment & Chemicals Ltd. V. State of West-Bengal & another***, AIR 1975 SC 266, the Hon'ble Supreme Court observed that where Government activity involves public element, the "citizen has a right to claim equal treatment" and where "the State acts to the prejudice of a person, it has to be supported by legality". Functioning of democratic form of Government demands equality and absence of arbitrariness and discrimination.

18. In view of the above, we direct opposite party Nos. 1 and 2 to conduct an inquiry regarding the functioning of Maa Tarini IMFL 'ON' Shop at Sanapatuli under Dhaneswar G.P. and if it is found that such 'ON' shop is functioning violating the distance criteria as provided under Rule 34 of the Orissa Excise Rules, 1965, immediate step should be taken to cancel the licence issued in favour of Maa Tarini IMFL 'ON' Shop after giving opportunity of hearing to it. This is

necessary in view of the provisions of sub-rule (2) of Rule 34 of the Orissa Excise Rules, 1965.

However, in exercising power under the proviso to Rule 34 of the Orissa Excise Rules, 1965, if the Government relaxed or intends to relax the restriction of minimum distance as mentioned at clauses (d) and (e) of Rule 34 (1) of the Orissa Excise Rules, 1965, under any special circumstances, in case of Maa Tarini IMFL 'ON' shop to allow it to run the shop at Sanapatuli, the proposal for grant of licence in favour of the petitioner to open beer parlour 'ON' shop in that area shall be considered in similar manner.

19. With the above said observation and direction, the writ petition is disposed of.

.....  
B.N.Mahapatra, J.

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

.....  
Chief Justice