

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.6916 of 2023

M/s. Galaxy Bar and Restaurant, ***Petitioner***
Nayagarh

Mr. R.P. Kar, Advocate

-versus-

State of Odisha and others ***Opposite Parties***

Mr. Debakanta Mohanty, A.G.A. for the State

CORAM:
THE CHIEF JUSTICE
JUSTICE G. SATAPATHY

ORDER
10.03.2023

Order No.

01. 1. Aggrieved by the non-grant of a licence for an IMFL Restaurant ON Shop under the name and style as “Galaxy Bar and Restaurant at Nayagarh”, the Petitioner has filed the present writ petition seeking a direction to the Opposite Parties to process the Petitioner’s application and grant the licence.
2. This Court has heard the submissions of Mr. R.P. Kar, learned counsel appearing for the Petitioner and Mr. Debkanata Mohanty, learned AGA for the Opposite Parties-State.
3. It is seen from the narration of events in the petition and the date chart submitted that the application by the Petitioner for the Restaurant ON Shop licence was filed way back on 5th April 2022. The Petitioner is stated to have responded to various queries and also provided clarifications. This was followed by an enquiry into the objections raised. The Inspector of Excise, Sadar, Nayagarh

submitted a report on 4th June 2022 to Opposite Party No.5 i.e., the Superintendent of Excise, Nayagarh stating that none of the objections were valid. This included the objections received from the Chairperson of the Nayagarh Municipality. Accordingly, the Superintendent of Excise on 6th June 2022 itself made a recommendation to the Collector, Nayagarh that the Petitioner's application should be granted.

4. However, another high level joint enquiry was launched by the Commissioner of Excise on 13th July 2022 and yet another enquiry on 5th November, 2022. All these enquiries went in favour of the Petitioner with the Excise Deputy Commissioner informing the Department that the building in which the restaurant was being run is in a commercial area.

5. On 24th January 2023, yet another enquiry was ordered only to determine if the Petitioner was registered under the GST Act and if its returns thereunder were filed.

6. Mr. R.P. Kar, learned counsel appearing for the Petitioner draws attention of the Court to the application submitted by the Petitioner which itself shows that a copy of the GST registration certificate has been enclosed. As rightly pointed out by Mr. Kar unless the Petitioner is issued a licence and is able to commence its business, the question of filing a GST return would not arise.

7. Mr. Debakanta Mohanty, learned Additional Government Advocate states that if any time bound direction is issued by this Court, it would be complied with.

8. Considering that all the previous enquiries have not found anything adverse as far as the Petitioner's application for an ON shop licence is concerned, and with the Petitioner having a GST registration certificate, Opposite Party No.1-Commissioner-cum-Secretary, Excise Department, Government of Odisha should now complete the further enquiries and communicate to the Petitioner the decision of the Government on the Petitioner's application positively on or before 27th March, 2023. It is specifically made clear that such application should not be rejected only because a GST return has not been filed yet since it is unrealistic to expect that to happen without the Petitioner actually commencing its business. Further, in view of the decision of this Court dated 22nd February 2021 in W.P.(C) No.30340 of 2020 (*Gitanjali Sahoo v. State of Odisha*), the question of entertaining any further objections does not arise.

9. The writ petition is disposed of in the above terms. A copy of this order be forthwith communicated to the Commissioner-cum-Secretary, Excise Department, Government of Odisha. Issue urgent certified copy of this order as per rules.

(Dr. S. Muralidhar)
Chief Justice

(G. Satapathy)
Judge