

ORISSA HIGH COURT: CUTTACK

AFR

W.P(C) NO. 9478 OF 2022

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

Padmabati Jena Petitioner

-Versus-

State of Odisha & Ors. Opp. Parties

For petitioner : M/s. D. Panda, S. Panda, A. Mehta & D.K. Panda, Advocates

For opp. parties : Mr. S. Nayak, Addl. Standing Counsel

P R E S E N T:

**THE HONOURABLE ACTING CHIEF JUSTICE DR. B.R.SARANGI
AND
THE HONOURABLE MR JUSTICE MURAHARI SRI RAMAN**

Date of hearing: 08.01.2024 :: Date of Judgment: 11.01.2024

DR. B.R. SARANGI, ACJ. The petitioner, by means of this writ petition, seeks to quash the letter dated 16.12.2021 under Annexure-6 issued by opposite party no.1-Secretary to Govt. of Odisha, Excise Department,

Bhubaneswar in cancelling the license of South City IMFL Hotel 'ON' Shop at Bhagabanpur Industrial Area, Tamando in the district of Khurda for the year 2021-22; and further to issue direction to the opposite parties to consider renewal of the license of South City IMFL Hotel 'ON' shop for the current excise year.

2. The brief facts, which led to filing of this writ petition, are that the petitioner was issued with IMFL 'ON' shop license in respect of Hotel South City (with Lodging) on 07.04.2021 by opposite party no.4- Superintendent of Excise, Bhubaneswar with validity from 01.04.2021 to 30.04.2021 on payment of license fee of Rs.2,00,000/- through challans dated 06.04.2021 and the currency of the said license was extended up to 30.09.2021. Apart from that, the petitioner has also deposited license fee of Rs.3,00,000/ through chalans dated 09.09.2021 after adjustment of relaxation amount of Rs.2,25,000/-, which was deposited in the excise year 2020-21 towards license fee for the year 2021-22.

2.1. On 11.10.2021, opposite party no.5-IIC, Tamando P.S, Bhubaneswar wrote to opposite party no.4, by way of requisition, to take action against the petitioner alleging that the Bar used to remain open till late night, i.e., 3 AM to 4 AM or more, and that the Dance Bar Room is too small but the licensee is allowing huge congregation, which violated the terms and conditions of the license and the COVID guidelines. Basing on the alleged requisition, without making any enquiry to the said allegations by the concerned Inspector of Excise as well as opposite party no.4, a show cause notice was issued to the petitioner on 16.10.2021 by opposite party no.4, by order of opposite party no.3-Collector, Khurda, to submit an explanation within 7 days as to why her license shall not be cancelled for violation of license conditions and COVID Pandemic guidelines, failing which action shall be taken for cancellation of license, as per the provisions of law.

2.2. On 22.10.2021, S.I., Tamando P.S lodged an FIR alleging that he got an information that one

employee of South City Hotel was illegally selling foreign liquor bottles to customers at the reception counter of the said Hotel. It was further alleged that owner of the Hotel, namely, Pradyumna Jena and his partners, including the petitioner, were running the Hotel till late hours of night violating guidelines and restrictions. The said FIR was registered for alleged commission of offences under Sections 269 /270 /168 /385 /506/ 120-B of the IPC read with Section 52(a) of Odisha Excise Act, 2008, Section 96 of the Odisha Urban Police Act, 2003, Section 3 of Epidemic Diseases Act, 1897 and Section 5 of the Odisha Fire Works and Loud Speaker (Regulation) Act, 1958. As a consequence thereof, the husband of the petitioner, namely, Pradyumna Kumar Jena was arrested on 23.10.2021 and was released on bail, vide order dated 05.11.2021 passed by the learned Addl. Sessions Judge-cum-Spl. Judge, CBI II, Bhubaneswar.

2.3. Though the petitioner received show-cause notice on 18.10.2021, she could not file any reply within

7 days, as her only son was under treatment at Chennai because his liver was not functioning and her husband was arrested in connection with Tamando P.S Case No.221 of 2021 arising out of C.T. Case No.5865/2021 pending on the file of learned S.D.J.M., Bhubaneswar. Then, opposite party no.3, vide letter dated 17.01.2021, recommended to opposite party no.1 for cancellation of license of the petitioner, as per Section 47 (c) of 2008 Act on the ground of illegal opening of 'ON' shop till late night, illegal operation of dance bar and allowing huge congregation. Opposite party no.1, vide letter No.6033/Ex, dated 16.12.2021, cancelled South City IMFL Hotel 'ON' shop license for the year 2021-22, as per Section 47 of the Odisha Excise Act, 2008. Hence, this writ petition.

3. Mr. D. Panda, learned counsel appearing for the petitioner vehemently contended that cancellation of the South City IMFL 'ON' shop license of the petitioner for the year 2021-22 under Section 47 of the Odisha Excise Act, 2008, vide order/letter dated 16.12.2021

under Annexure-6, cannot be sustained in the eye of law, as the same was issued/passed without assigning any reason and without any notice in writing and without offering an opportunity of hearing to her, as required under Section 47 (4) of the Odisha Excise Act, 2008 and without following the principle of natural justice. It is further contended that on the requisition of Tamando Police dated 11.10.2021 under Annexure-3 that the Bar was used to open till late night and dance bar room is too small and the licensee was allowing huge congregation violating the terms and conditions of license and COVID guidelines are totally incorrect and baseless. As such, no enquiry has been conducted by the Excise Officials as well as opposite party no.4 to know about the correctness of the allegations, but, basing on the false allegations of Tamando Police, opposite party no.4 issued show cause notice dated 16.10.2021 under Annexure-4, and the opposite party no.1, without giving any opportunity of hearing to the petitioner, passed the order impugned cancelling the license of South City IMFL Hotel 'ON' shop, which cannot be sustained in the

eye of law. It is further contended that opposite party no.1 could have compounded the alleged offences, as provided under Section 75 of Odisha Excise Act, 2008, as first offence, by imposing fine under Section 64 (c) of the Odisha Excise Act, 2008 for breach of any regulatory/license conditions and operation of 'ON' shop against COVID guidelines, as in similar circumstances the Excise Commissioner, Odisha, Cuttack, vide order dated 12.08.2020 in Excise Appeal Case Nos.2, 3, 4, 5, 6 and 7 of 2020 allowed revival of licenses. It is further contended that as per the excise law in vogue, the State Government in Excise Department is the competent authority and has jurisdiction to issue show cause notice and decide cancellation of license, as per Section 47 of the Odisha Excise Act, 2008. But, in the present case, opposite party no.4, by order of opposite party no.3-Collector, Khurda, being not the competent authority and without any jurisdiction, issued show cause notice dated 16.10.2021 under Annexure-4, whereby opposite party no.1 has taken decision illegally for cancellation of license of the petitioner without issuing show cause

notice, as per Section 47 (4) of 2008 Act. Therefore, it is contended that the order/letter dated 16.12.2021 under Annexure-6 issued by opposite party no.1 cancelling the license of the petitioner cannot be sustained in the eye of law and consequentially seeks for quashing of the same.

4. Mr. S. Nayak, learned Additional Standing Counsel appearing for the State-opposite parties vehemently contended that the action taken against the petitioner is well within the jurisdiction of the authority concerned and, as such, although the petitioner was continuing South City IMFL Hotel 'ON' shop, being a license holder, but, in view of the allegations made, the license of the petitioner was cancelled vide letter/order dated 16.12.2021 of the State Government for the Excise Year 2021-22. It is further contended that the petitioner has not approached this Court with clean hands and has suppressed the true state of affairs. Therefore, she is not entitled to get any relief, as prayed in the writ petition. It is further contended that since the petitioner violated the terms and conditions of the license, which virtually

caused harm to the peaceful citizens of the locality and destroyed the sanctity of the locality, which is violative of the provisions contained in Section 47 (c) of the Odisha Excise Act, 2008, the license of the petitioner was cancelled. It is further contended that while cancelling the license, sufficient opportunity of hearing to the petitioner was given to disprove the allegations and, therefore, the question of violation of Section 47(4) of the Odisha Excise Act, 2008 does not arise. It is further contended that as per the provisions contained under Section 47(4) of the Odisha Excise Act, 2008, the petitioner was issued with notice to show cause vide letter dated 16.10.2021, as per the order of the Collector, Khurda. It is further contended that the Officer-in-Charge of Bhubaneswar-III Excise Station also issued a show cause notice, vide letter dated 14.10.2021. Both the notices were received by the licensee on 18.10.2021. Even though such notices were issued, the petitioner did not give any reply within the stipulated period, i.e., by 09.11.2021. It is further contended that though the petitioner is obliged under law to abide by the terms and

conditions of the license, she failed to discharge her duty, as during late hours of the night, she was selling liquor in the licensed premises as well as in other premises. Thereby, there is violation of the licence conditions as well as the provisions contained in the Odisha Excise Act, 2008, for which the Inspector in-Charge, Tamando Police Station registered a case vide Tamando P.S Case No.221 dated 27.10.2021 for the offences punishable under Sections 269, 270, 168, 385, 386, 506, 120(B) of the IPC, Section 52(A) of the Odisha Excise Act, 2008, Section 96 of the Odisha Urban Police Act, Section 3 of the Epidemic Disease Act, 1897 and Section 5 of Odisha Fireworks Loud Speaker Act. Since the petitioner violated the terms and conditions of the license, action has been taken as per the provisions contained under Section 47(C) of the Act, 2008.

5. This Court heard Mr. D. Panda, learned counsel appearing for the petitioner and Mr. S. Nayak, learned Additional Standing Counsel appearing for the State-opposite parties in hybrid mode. Pleadings have

been exchanged between the parties and with the consent of learned counsel for the parties, the writ petition is being disposed of finally at the stage of admission.

6. For just and proper adjudication of the case, the provisions of Sections-20, 47 and 48 of the Odisha Excise Act, 2008, being relevant, are extracted hereunder:-

“20. Grant of exclusive privilege of manufacture and sale of foreign liquor, India made foreign liquor and country liquor or other intoxicants etc.:-(1) *The State Government may grant to any person on such conditions and for such period as it may think fit, the exclusive privilege-*

- (i) *of manufacturing, or of supplying by wholesale, or of both; or*
- (ii) *of selling by wholesale or by retail; or*
- (iii) *of manufacturing or of supplying by wholesale, or of both, and of selling by retail,*

any liquor or other intoxicant within any specified local area :

Provided that public notice shall be given of the intention to grant any such exclusive privilege under the preceding sub-section and that any objections made by any person residing within that area shall be considered before an exclusive privilege is granted.

(2) The State Government may, by notification, confer on any officer the power mentioned in Sub-section (1).

(3) No grantee of any privilege under Sub-section (1) shall exercise the same unless or until he has received a licence in that behalf from the Collector or the Excise Commissioner.

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47. Power to cancel or suspend licence, permit or pass :- (1) Subject to such restrictions as may prescribed, the authority granting any exclusive privilege, licence, permit or pass under this Act may cancel or suspend it irrespective of the period to which the same relates –

(a) if it is transferred or sublet by the holder thereof without the permission of the said authority; or

(b) if any duty or fee payable by the holder thereof has not been paid; or

(c) in the event of any breach by the holder thereof or by any of his servants, or by any one acting on his behalf, with his express or implied permission, of any of the terms or conditions thereof; or

(d) if the holder thereof is convicted of any offence punishable under this Act or any other law for the time being in force relating to revenue or of any cognizable and non-bailable offence: or

(e) Where a licence, permit or pass has been granted on the application of the holder of an exclusive privilege granted under Section 20 on the requisition in writing of such holder; or

(f) if the conditions of the exclusive privilege, licence, permit or pass provide for such cancellation or suspension at will.

(2) When an exclusive privilege, licence, permit or pass held by any person is cancelled under clause (a), (b), (c) or (d) of Sub-section (1), the authority aforesaid may cancel any other exclusive privilege, licence, permit or pass granted to such person under this Act, or under any other law for the time being in force relating to Excise.

(3) The holder of an exclusive privilege, licence, permit or pass shall not be 1. Substituted vide Odisha Gazette Ext. No. 2008, Dt. 07.11.2016 18 THE ODISHA EXCISE ACT, 2008 entitled to any compensation for its cancellation or suspension under this Section, or to the refund of any fee or

consideration money paid or deposit made, in respect thereof.

(4) Before cancellation of the exclusive privilege, licence, permit or pass the authority cancelling it shall give to the grantee at least seven days' notice in writing of his intention to cancel it and offer an opportunity to him to show cause within the said period as to why his exclusive privilege, licence, permit or pass should not be cancelled.

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48. Power to withdraw licences :- (1) Whenever the authority granting any licence or exclusive privilege under this Act considers that the licence or exclusive privilege should be withdrawn for any cause other than those specified in Section 47, it shall remit a sum equal to the amount of the fees or consideration money payable in respect thereof for fifteen days, and may withdraw the licence either –

(a) on the expiration of fifteen days' notice in writing of its intension to do so,
or

(b) forthwith, without notice.

(2) If any licence or grant of an exclusive privilege is withdrawn under clause (a) of Sub-section (1), the Excise Commissioner may, in special circumstances, direct the payment of such compensation as he may consider fit, in addition to the remission of the fee to the licensee or grantee of an exclusive privilege as aforesaid.

(3) When a licence or grant of an exclusive privilege is withdrawn under Subsection (1), any fee paid in advance, or deposit made, by the licensee or grantee of an exclusive privilege in respect thereof shall be refunded to him, after deducting the amount, if any, due to the State Government.

(4) For the purpose of calculating the amount due to the State Government mentioned in Sub-section (2), the amount of fee or consideration money payable on account of the licence or exclusive privilege, as the case may be, for the period during which it was in

force shall be taken to be the sum bearing the same proportion to the total fee or consideration money, for the whole period for which the licence or exclusive privilege was settled, as the period during which the licence or exclusive privilege was in force bears to the full period for which the licence or exclusive privilege was settled or granted.”

7. On perusal of the aforementioned provisions of the 2008 Act, it is made clear that for grant of exclusive privilege of manufacture and sale of foreign liquor, India made foreign liquor and country liquor or other intoxicants, etc., the State Government may grant to any person on such conditions and for such period as it may think fit, the exclusive privilege in respect of manufacturing, or of supplying by wholesale, or of both; or of selling by wholesale or by retail; or of manufacturing or of supplying by wholesale, or of both, and of selling by retail, any liquor or other intoxicant within any specified local area. Section 47 of the Act deals with power to cancel or suspend licence, permit or pass subject to sub-section (4) of Section 47 of the Act which contains that before cancellation of the exclusive privilege, licence, permit or pass the authority cancelling it shall give to the grantee at least seven days' notice in writing of his

intention to cancel it and offer an opportunity to him to show cause within the said period as to why his exclusive privilege, licence, permit or pass should not be cancelled. Therefore, it is a mandate that the authority can cancel the license and for that the authority shall have to give the grantee at least seven days' notice in writing of his intention to cancel it and offer an opportunity to him to show cause within the said period. But nothing has been placed on record showing that observing the provisions contained in Section 47(4) of the Odisha Excise Act, due opportunity of hearing to the petitioner was given while cancelling the license granted in her favour.

8. The letter/order dated 16.12.2021 shows that it was the proposal for cancellation of license issued in favour of the petitioner for the year 2021-22, which reads as follows:

“Sir,

I am directed to invite a reference to your letter No.10437 dated 02.12.2021 on subject cited above and to say that Government, after careful consideration, have been pleased to accord approval for cancellation of licence of South City IMFL Hotel 'ON' Shop issued in favour of Smt. Padmabati Jena situated at Bhagwanpur Industrial Area, P.S-Tamandao, Dist-Khordha for the year 2021-22 under section 47 of Odisha Excise Act, 2008.”

On perusal of the aforesaid letter/order, it appears that no reason has been assigned in cancelling the license. Since no reason has been assigned, the order/letter so issued on 16.12.2021 under Annexure-6 cannot be sustained in the eye of law.

9. Reasons being a necessary concomitant to passing an order, the authority can thus discharge its duty in a meaningful manner either by furnishing the same expressly or by necessary reference to those given by the original authority.

In ***Union of India v. Mohan Lal Capoor***, AIR 1974 SC 87, it has been held that reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject-matter for a decision whether it is purely administrative or quasi-judicial and reveal a rational nexus between the facts considered and conclusions reached. The reasons assure an inbuilt support to the conclusion and decision reached. Recording of reasons is also an assurance that the

authority concerned applied its mind to the facts on record. It is vital for the purpose of showing a person that he is receiving justice.

Similar view has also been taken in ***Uma Charan v. State of Madhya Pradesh***, AIR 1981 SC 1915, ***Patitapaban Pala v. Orissa Forest Development Corporation Ltd. & another***, 2017 (I) OLR 5 and in ***Banambar Parida v. Orissa Forest Development Corporation Limited***, 2017 (I) OLR 625.

10. Learned counsel appearing for the petitioner emphatically stated that while cancelling the license of the petitioner, no opportunity of hearing was given to her, though Section 47(4) of the Odisha Excise Act categorically mandates that before cancellation of license opportunity of being heard has to be given to the grantee.

11. In view of such position, since no opportunity of hearing was given to the petitioner while order/letter dated 16.12.2021 under Annexure-6 was issued cancelling her license, as required under Section 47 (4) of

the Act, it amounts to violations of the principles of natural justice.

12. The essential of compliance of natural justice is nothing but a duty to act fairly. Natural justice is an antithesis of arbitrariness. It, therefore, follows that *audi alteram partem*, which is facet of natural justice is a requirement of Art.14.

12.1. The word 'nature' literally means the innate tendency or quality of things or objects and the word 'just' means upright, fair or proper. The expression 'natural justice' would, therefore, mean the innate quality of being fair.

12.2. Natural justice, another name of which is common sense of justice, is the name of those principles which constitute the minimum requirement of justice and without adherence to which justice would be a travesty. Natural justice accordingly stands for that fundamental quality of fairness which being adopted,

justice must not only be done but also appears to be done.

12.3. The soul of natural justice is “fair play in action”.

13. In **HK (An Infant) in re**, 1967 1 All ER 226 (DC), Lord Parker, CJ, preferred to describe natural justice as 'a duty to act fairly'.

13.1. In **Fairmount Investments Ltd. v. Secy. of State for Environment**, 1976 2 All ER 865 (HL), Lord Russel of Killowen somewhat picturesquely described natural justice as 'a fair crack of the whip'.

13.2. In **R. v. Secy. Of State for Home Affairs**, ex p. Hosenball, Geoffrey Lane, LJ, 1977 3 All ER 452 (DC & CA), preferred the homely phrase 'common fairness' in defining natural justice.

13.3. In **Ridge v. Baldwin**, (1963) 2 SLL RT 66 at 102, Lord Morris of Borth-y-Gest observed that “it is well established that the essential requirements of natural

justice at least include that before someone is condemned he is to have an opportunity of defending himself, and in order that he may do so that he is to be made aware of the charges or allegations or suggestions which he has to meet ... My Lords, here is something which is basic to our system: the importance of upholding it far transcends the significance of any particular case".

13.4. In ***Byrne v. Kinematograph Renters Society Ltd***, (1958) All ER 579, while considering the requirements of natural justice, Justice Narman, J said. ".....First, I think that the person accused should know the nature of the accusation made; secondly, that he should be given an opportunity to state his case; and thereby, of course, that the tribunal should act in good faith. I do not think that there really is anything more".

13.5. In ***Russel v. Duke of Norfolk***, (1949) 1 All ER 109, Tucker, LJ, observed that one essential is that the person concerned should have a reasonable opportunity of presenting his case. The view of Tucker, LJ, in

Russell's case (supra) has been approved by the Supreme Court of India in **Rattan Lal Sharma v Managing Committee**, (1993) 4 SCC 10 : AIR 1993 SC 2115.

13.6. In **General Medical Council v. Spackman**, (1943) AC 627, Lord Wright pointed out that it should give a full and fair opportunity to every party being heard.

13.7. In **A.K. Kraipak and others v. Union of India**, AIR 1970 SC 150: (1969) 2 SCC 262, is a landmark in the growth of this doctrine. Speaking for the Constitution Bench, Hegde, J. observed thus:

"If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have far reaching effect than a decision in a quasi-judicial enquiry".

In **Maneka Gandhi v. Union of India**, AIR 1978 SC 597 : (1978) 1 SCC 248, law has done further blooming of this concept. This decision has established beyond doubt that even in an administrative proceeding involving civil consequences doctrine of natural justice must be held to be applicable.

13.8. In **Swadeshi Cotton Mills v. Union of India**, AIR 1981 SC 818, the meaning of 'natural justice' came for consideration before the apex Court and the apex Court observed as follows:-

"The phrase is not capable of a static and precise definition. It cannot be imprisoned in the straight-jacket of a cast-iron formula. Historically, "natural justice" has been used in a way "which implies the existence of moral principles of self evident and urarguable truth". "Natural justice" by Paul Jackson, 2nd Ed., page-1. In course of time, judges nurtured in the traditions of British jurisprudence, often invoked it in conjunction with a reference to "equity and good conscience". Legal experts of earlier generations did not draw any distinction between "natural justice" and "natural law". "Natural justice" was considered as "that part of natural law which relates to the administration of justice."

13.9. In **Basudeo Tiwary v Sido Kanhu University and others** (1998) 8 SCC 194, the apex Court held that

natural justice is an antithesis of arbitrariness. It, therefore, follows that *audi alteram partem*, which is facet of natural justice is a requirement of Art.14.

13.10. In ***Nagarjuna Construction Company Limited v. Government of Andhra Pradesh***, (2008) 16 SCC 276, the apex Court held as follows:

"The rule of law demands that the power to determine questions affecting rights of citizens would impose the limitation that the power should be exercised in conformity with the principles of natural justice. Thus, whenever a man's rights are affected by decisions taken under statutory powers, the court would presume the existence of a duty to observe the rules of natural justice. It is important to note in this context the normal rule that whenever it is necessary to ensure against the failure of justice, the principles of natural justice must be read into a provision. Such a course is not permissible where the rule excludes expressly or by necessary intendment, the application of the principles of natural justice, but in that event, the validity of that rule may fall for consideration."

13.11. The apex Court in ***Uma Nath Panday and others v State of U.P. and others***, AIR 2009 SC 2375, held that natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following

the principles of natural justice is the prevention of miscarriage of justice.

13.12. In ***Mohinder Singh Gill v. The Chief Election Commissioner***, AIR1978 SC 851 : (1978) 1 SCC 405, the apex Court held that natural justice is treated as a pervasive facet of secular law where a spiritual touch enlivens legislation, administration and adjudication, to make fairness a creed of life. It has many colours and shades, many forms and shapes and, save where valid law excludes, it applies when people are affected by acts of Authority. It is the bone of healthy government, recognised from earliest times and not a mystic testament of judge-made law. Indeed, from the legendary days of Adam-and of Kautilya's Arthasastra-the rule of law has had this stamp of natural justice which makes it social justice.

13.13. In ***Bhagwan v. Ramchand***, AIR 1965 SC 1767: (1965) 3 SCR 218, the apex Court held that the rule of law demands that the power to determine questions affecting rights of citizens would impose the

limitation that the power should be exercised in conformity with the principles of natural justice.

13.14. In **Sukdev Singh v Bhagatram**, AIR 1975 SC 1331: (1975)1 SCC 421, the apex Court held that whenever a man's rights are affected by decisions taken under statutory powers, the court would presume the existence of a duty to observe the rules of natural justice.

14. A contention was raised by learned counsel for the petitioner that the authority, who has passed the order impugned, has no jurisdiction to cancel the license of the petitioner. According to him, as per the provisions contained in Section 20 of the Odisha Excise Act, 2008, the State Government may grant to any person on such conditions and for such period as it may think fit, the exclusive privilege in respect of manufacturing, or of supplying by wholesale, or of both; or of selling by wholesale or by retail; or of manufacturing or of supplying by wholesale,

or of both, and of selling by retail, any liquor or other intoxicant within any specified local area. On perusal of the letter/order dated 16.10.2021 under Annexure-4, it would appear that show cause notice was issued by order of the Collector, Khurda and under the signature of the Superintendent of Excise, Bhubaneswar. The notice of show cause was issued on the allegation of violation of terms and conditions of the license and COVID guidelines. Neither the Collector, Khurda, nor the Superintendent of Excise, Bhubaneswar is the competent authority to issue such show cause notice for cancellation of license of the petitioner for violation of terms and conditions of the license and COVID guidelines. Therefore, an incompetent person, having no jurisdiction, has issued notice of show cause dated 16.10.2021 under Annexure-4, which cannot be sustained in the eye of law.

15. **Butterworths'** Words and Phrases Legally Defined, Vol.3 at page-113, states succinctly "by jurisdiction is meant the authority which a Court has to

decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision”.

15.1. In **Black’s Law** Dictionary, 6th Ed., the word ‘jurisdiction’ is defined as ‘a term of comprehensive import embracing every kind of judicial action’.

15.2. In **Halsbury’s Laws of England**, 4th Ed. Vol.1(1) pp.113-122, it is stated as follows;

“The inferior Court or tribunal lacks jurisdiction if it has no power to enter upon an enquiry into a matter at all; and it exceeds jurisdiction if it nevertheless enters upon such an enquiry or, having jurisdiction in the first place, it proceeds to arrogate an authority withheld from it by perpetrating a major error of substance, form or procedure, or by making an order or taking action outside its limited area of competence. Not every error committed by an inferior Court or tribunal or other body, however, goes to jurisdiction. Jurisdiction to decide a matter imports a limited power to decide that matter incorrectly.

A tribunal lacks jurisdiction if (1) it is improperly constituted, or (2) the proceedings have been improperly instituted, or (3) authority to decide has been delegated to it unlawfully, or (4) it is without competence to deal with a matter by reason of the parties, the area in which the issue arose, the nature of the subject-matter, the value of that subject-matter, or the non-existence of any other pre-requisite of a valid adjudication. Excess of jurisdiction is not materially distinguishable from lack of jurisdiction and the expressions may be used interchangeably.

Where the jurisdiction of a tribunal is dependent on the existence of a particular state of affairs, that state of affairs may be described as preliminary to, or collateral to the merits of, the issue, or as jurisdictional.

There is a presumption in construing statutes which confer jurisdiction or discretionary powers on a body, that if that body makes an error of law while purporting to act within that jurisdiction or in exercising those powers, its decision or action will exceed the jurisdiction conferred and will be quashed. The error must be one on which the decision or action depends. An error of law going to jurisdiction may be committed by a body which fails to follow the proper procedure required by law, which takes legally irrelevant considerations into account, or which fails to take relevant considerations into account, or which asks itself and answers the wrong question.

The presumption that error of law goes to jurisdiction may be rebutted on the construction of a particular statute, so that the relevant body will not exceed its jurisdiction by going wrong in law. Previously, the courts were more likely to find that errors of law were within jurisdiction; but with the modern approach errors of law will be held to fall within a body's jurisdiction only in exceptional cases. The Court will generally assume that their expertise in determining the principles of law applicable in any case has not been excluded by Parliament.

Errors of law include misinterpretation of a statute or any other legal document or a rule of common law; asking oneself and answering the wrong question, taking irrelevant considerations into account or failing to take relevant considerations into account when purporting to apply the law to the facts; admitting inadmissible evidence or rejecting admissible and relevant evidence; exercising a discretion on the basis of incorrect legal principles; giving reasons which disclose faulty legal reasoning or which are inadequate to fulfil an express duty to give reasons, and misdirecting oneself as to the burden of proof".

The same has been referred in **Reliance Airport Development Authorities v. Airport Authority**, (2006) 10 SCC 1.

15.3. **Wade's Administrative Law** 7th Ed. (1994) Chapter 9, states as follows:

"The Court will quash for any decisive error, because all errors of law are now jurisdictional".

The same has been taken note by the apex Court in **Mafatlal Industries Ltd. v. Union of India**, (1997) 5 SCC 536.

15.4. In **Smt. Ujjam Bai v. State of U.P.** (Constitution Bench), AIR 1962 SC 1621, the apex Court held that 'jurisdiction' is the power to hear and determine, it does not depend upon the regularity of the exercise of that power or upon correctness of the decision pronounced, for the power to decide necessarily carries with it the power to decide wrongly as well as rightly.

15.5. In **Official Trustee West Bengal v. Sachindranath Chatterji & Ors.**, AIR 1969 SC 823, the

apex Court, while considering Section-9 of the Code of Civil Procedure, held that 'jurisdiction' means the legal authority to administer justice according to the means which the law has provided and subject to the limitations imposed by that law upon the judicial authority.

15.6. In **Raja Soap Factory v. S.P. Shantharaj**, AIR 1965 SC 1449, the apex Court held that by "jurisdiction" is meant the extent of the power which is conferred upon the Court by its Constitution to try a proceeding.

15.7. In **Hari Prasad Mulshankar Trivedi v. V.B. Raju**, AIR 1973 SC 2602, the apex Court held that the word "jurisdiction" is an expression which is used in a variety of senses and takes its colour from its context. Whereas the 'pure' theory of jurisdiction would reduce jurisdictional control, to a vanishing point, the adoption of a narrower meaning might result in a more useful legal concept even though the formal structure of law may lose something of its logical symmetry.

15.8. In **A.R. Antulay v. R.S. Nayak**, AIR 1988 SC 1531, the apex Court held that jurisdiction is the authority or power of the Court to deal with a matter and make an order carrying binding force in the facts.

15.9. In **Harpal Singh v. State of Punjab**, (2007) 13 SCC 387, the apex Court held that 'jurisdiction' means the authority or power to entertain, hear and decide a case and to do justice in the case and determine the controversy. In absence of jurisdiction the Court has no power to hear and decide the matter and the order passed by it would be a nullity.

15.10. In **CIT v. Pearl Mech. Engg. & Foundry Works (P.) Ltd.**, (2004) SCC 597, the apex Court held that the word 'jurisdiction' implies the Court or tribunal with juridical power to hear and determine a cause, and such tribunal cannot exist except by authority of law.

15.11. In **J.U. Mansukhani & Co. v. Presiding Officer**, AIR 2000 Del 103, the High Court Judicature at Delhi held that the term "Jurisdiction" is normally

understood as the authority to decide a matter or dispute.

16. Taking into consideration the meaning of 'jurisdiction', as prescribed in various dictionaries as well as decisions of different Courts of the country including the apex Court, it can be safely concluded that so far as the question of 'jurisdiction' is concerned it would relate to initiation of the proceeding by an authority. In the instant case, basing upon the intimation received from the IIC, Tamando Police Station, cancellation of the license was made without following due procedure and without complying with the principles of natural justice, which cannot be sustained in the eye of law.

17. On the basis of the facts and law, as discussed above, this Court is of the considered view that the order/letter dated 16.12.2021 passed by the Under Secretary to Government of Odisha, Excise Department under Annexure-6 approving the cancellation of license issued in favour of the petitioner in respect of South City IMFL Hotel 'ON' Shop situated at Bhagwanpur Industrial

Area, P.S. Tamandao, District-Khurda for the year 2021-22 cannot be sustained in the eye of law. Thereby, the same is liable to be quashed and is hereby quashed. The matter is remitted back to opposite party no.1 for being adjudicated afresh by passing a reasoned and speaking order in accordance with law in compliance of the principles of natural justice by affording opportunity of hearing to the petitioner.

18. In the result, therefore, the writ petition is allowed. But, however, under the facts and circumstances of the case, there shall be no order as to costs.

(DR. B.R. SARANGI)
ACTING CHIEF JUSTICE

M.S. RAMAN, J. I agree.

(M.S. RAMAN)
JUDGE