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ORISSA HIGH COURT : CUTTACK

W.P.(C) No.34137 of 2025

In the matter of an Application under Articles 226 & 227 of
the Constitution of India, 1950

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Sri Bulu Jena
Aged about 45 years
Son of Ghanasyam Jena
At: Pandia, PO: Purusottampur
District: Ganjam
PIN: 761043
(Licensee in respect of
Seragada O.S. Main Shop
with attached
Branch Shop at Balisahi
In the district of Ganjam). ... Petitioner

-VERSUS-

- 1.** State of Odisha,
Represented by the
Principal Secretary to Government,
Excise Department, Loka Seva Bhawan
Sachivalaya Marg, Bhubaneswar – 751 001
District: Khordha.
- 2.** Excise Commissioner
Odisha, Cuttack Road
Bidanasi, P.O.: Cuttack – 753 014
District: Cuttack.



3. Collector, Ganjam
At/P.O.: Chatrapur
District: Ganjam.

4. Superintendent of Excise
Ganjam,
At/P.O.: Chatrapur
District: Ganjam.

... Opposite Parties

Counsel appeared for the parties:

For the Petitioner : Mr. Prafulla Kumar Rath,
Senior Advocate
assisted by
M/s. Saibrata Rath,
Adhiraj Behera,
Surajit Kumar Behera,
Shradha Das, Sridhan Chandan,
Gayatri Lenka, Ankit Mohanty,
Indira Priyadarsani Bose,
Swagat Mohapatra and
Adarsh Biswal, Advocates

For the Opposite Parties : Mr. Debasish Tripathy,
Additional Government Advocate

P R E S E N T:

**HONOURABLE CHIEF JUSTICE
MR. HARISH TANDON**

AND

**HONOURABLE JUSTICE
MR. MURAHARI SRI RAMAN**

Date of Hearing : 11.12.2025 :: Date of Judgment : 11.12.2025



JUDGMENT

MURAHARI SRI RAMAN, J.—

1. Questioning the authority and jurisdiction of the Superintendent of Excise, Ganjam, Chatrapur-opposite party No.4 issuing direction in Letter No.2966/Ex., dated 1st November, 2025 (Annexure-1) to the petitioner-Excise Privilege Holder of Sheregada Out Still Shop to shift the shop from its current location to an alternative location stemming on provisions of Rule 26 of the Odisha Excise Rules, 2017 (for short, “the Rules, 2017”), the petitioner has approached this Court by way of filing this writ petition invoking provision under Articles 226 and 227 of the Constitution of India with the following prayer(s):

“The petitioner, therefore, pray that your Lordship would be graciously pleased to admit this writ petition, call for the records and after hearing the parties allow the same, issue writ/writs in the nature of certiorari/mandamus and/or any other further writ/direction, quashing the order dated 01.11.2025 passed by Superintendent of Excise, Ganjam, Chatrapur under Annexure-1 and allow the licensee to operate the license at the present location.

And for this act of kindness, the petitioner shall as in duty bound ever pray.”

2. Mr. Prafulla Kumar Rath, learned Senior Advocate appearing for the petitioner submitted that the Sheregada Out Still Shop at Baramundali Village in Aska Tahasil in the district of Ganjam has eight numbers of branch shops



including the Balisahi Branch Shop, which is subject matter of the present writ petition. Though the license issued in respect of this branch shop stands valid till 31st March, 2026, on the basis of objection, a communication has been issued by the Superintendent of Excise, Ganjam, Chatrapur *vide* letter dated 1st November, 2025 instructing the petitioner to shift the shop from the existing location. It is submitted that aforesaid branch shop has been granted license since 2005 and the same has been renewed every year. It is contended that the Superintendent of Excise, Ganjam, Chatrapur misread the purport of Rule 26 of the Rules, 2017 and on an erroneous apprehension of the provisions contained in Section 41 of the Odisha Excise Act, 2008 (for short, “the Act, 2008”) issued letter dated 1st November, 2025.

2.1. He further submitted that in view of the fact that branch has been operating its business activity in the present site for more than twenty years and, hence, in view of Section 41 of the Act, 2008, the direction of the Superintendent of Excise, Ganjam, Chatrapur *vide* letter dated 1st November, 2025 is contrary to law. This apart, there is absence of any proposal by the petitioner for shifting of said shop from the current location, and Rule 53 of the Rules, 2017 does not authorize the Superintendent of Excise, Ganjam, Chatrapur to issue direction for shifting of the shop.



2.2. Added to the above, learned Senior Advocate arduously submitted that flagrant violation of principles of natural justice is apparent on the face of record. Inasmuch as, the Superintendent of Excise, Ganjam, Chatrapur has never disclosed the nature of objection and source of objection received and consideration of such objection beyond the periods stipulated under Rules 31 to 33 of the aforesaid Rules vitiates the contemplated action *vide* letter dated 1st November, 2025.

3. In pursuance of Order dated 4th December, 2025, learned Additional Government Advocate appearing for the opposite parties furnished copy of instruction as received in the Office of the learned Advocate General of Odisha, wherefrom it is revealed that *“the Collector, Ganjam orally raised objection and directed to shift the shop on the ground of existence of the shop in close proximity approximately 30 meters to the Balisahi Out Still Shop at Shergarh”*.

3.1. It is, therefore, submitted by the learned Additional Government Advocate appearing for the State-opposite parties submitted that the Collector, Ganjam has been apprised such fact by raising oral objection by the public of the locality and the Collector having collected information from the locality, felt that the continuance of aforesaid shop in the present place is not conducive. Having received such instruction from the Collector,



Ganjam, the letter dated 1st November, 2025 has been issued, which is in consonance with the restrictions/conditions imposed under Rule 26 of the Rules, 2017. He fervently prayed for dismissal of the writ petition in *limine*.

4. Heard Mr. Prafulla Kumar Rath, learned Senior Advocate appearing for the petitioner and Mr. Debasish Tripathy, learned Additional Government Advocate appearing for the State-Opposite parties.
5. On perusal of record, it reveals that the Superintendent of Excise, Ganjam, Chatrapur issued letter dated 1st November, 2025 from the District Excise Office, Ganjam with the following text:

“Sub: Regarding shifting of Bali Sahi O.S. Branch Shop under Sheregada Main Shop.

This Notice is to bring to your attention that as per the allegation received by the Collector, Ganjam, alleging that the Bali Sahi Govt. U.P. School is situated in close proximity (approximately 30 meters) to the Bali Sahi O.S. Branch Shop at Sheregada, thereby contravening Rule 26 of the Odisha Excise Rules, 2017.

Hence, you are hereby instructed to shift the said shop from its current site to an alternative, unobjectionable location, ensuring the smooth operation of the shop within 2 (two) weeks from the date of receipt of this notice.”



5.1. The instruction as received in the Office of the learned Advocate General, Odisha from the said Superintendent transpires the following fact:

“initial license was granted in favour of the licensee Sri Ranka Sahu vide license No.43 of 2005-06. The said Ranka Sahu transferred the license in favour of the present petitioner vide order dated 08.10.2021. Thereafter the licensee is operating the shop generating revenue for the State. The said license is being renewed from time to time as per Excise Rules and Excise Policy framed by the Government from time to time. That the Shop in question is running on the basis of renewal since last 20 years”.

5.2. It is thus discernible that the Superintendent of Excise, Ganjam, Chatrapur has not controverted the basic foundational fact pleaded in the writ petition.

5.3. As has already been stated hereinabove that the license to carry on business is renewed and allowed to remain valid till 31st March, 2026, which fact is evident from License Form No.XLV (O.S.1) issued under the seal and signature of the Superintendent of Excise, Ganjam on 8th April, 2021, upon being approved by the Collector on the said date. Thus being the undisputed fact, the provisions of Rule 53 of the Rules, 2017 in no ambiguous terms postulates that the Superintendent of Excise, Ganjam, Chatrapur has no jurisdiction to issue direction for shifting of the shop.



5.4. For proper comprehension of the legality of exercise of power to issue direction to shift the shop by the Superintendent of Excise, as contended by the learned Senior Advocate for the petitioner, the provisions of Rule 53 of the Rules, 2017 are reproduced hereunder:

“53. Fixing and shifting of shop premises.—

- (1) Any person intending to obtain a license under the Act or a person selected for grant of license for retail vend of any intoxicants shall specify about the locality of vend a village, sahi or in town, a Mahala, street or certain street or word to the authority competent to grant such license.*
- (2) If the details given under sub-rule (1) are considered vague or insufficient the Collector shall specify a particular distance from some fixed spots, from the premises where the shop is intended to be opened.*
- (3) The details of the whole locality be fixed and notified before the settlement is made.*
- (4) The site of the shop shall be subject to the approval of the Collector.*
- (5) In case of shifting of shop for any reason, the details as mentioned in sub-rule (1) shall be furnished to the Collector, who, on being satisfied refer to the Commissioner for his approval.”***

5.5. Scrutiny of the impugned Letter dated 1st November, 2025 issued by the Superintendent of Excise, Ganjam, Chatrapur, directing the petitioner to shift his shop from



the present location apparently does not seem to have emanated from the competent authority conferred with power by and under Rule 53(5) of the Rules, 2017. It also does not spell out that the Superintendent of Excise has adhered to the modality envisioned in Rule 53 of the Rules, 2017. Therefore, the impugned letter in question with direction cannot be held to be tenable in the eye of law, being without authority.

6. With respect to contention of the petitioner that in absence of adherence to Rules 31 to 33, particularly sub-rule (2) of Rule 33, there is no scope for directing the petitioner to shift the shop during currency of the license, which is renewed to remain valid till 31.03.2026. It is asserted by the petitioner that the business has been carried from the Balisahi Branch shop since 2005 without any objection or demur. The license being renewed from time to time, the direction contained in the impugned letter dated 1st November, 2025 issued by the Superintendent of Excise, Ganjam, Chatrapur cannot withstand judicial scrutiny in view of Section 41 of the Act, 2008.

6.1. For better understanding, Section 41 of the Act, 2008 is quoted hereunder:

“41. Grant of licenses by Collector and submission of list, objections and suggestions of Excise Commissioner.—



- (1) *After the date prescribed for receipt of objections and suggestions, the Collector shall consider all the objections and suggestions submitted under section 40 and if necessary, revise the said list, and shall decide for which places licenses for the retail sale of spirit shall be granted:*

Provided that no objections shall ordinarily be entertained for shops continuing in an area for more than three years, unless there are special reasons to be recorded in writing.

- (2) *The Collector shall thereupon submit the said list, as so revised, and the said objections and suggestions and his own opinion and recommendations, if any, to the Excise Commissioner.”*

6.2. Rule 31 of the Rules, 2017 provides that before the Government decides to grant license, the Collector shall affix the public notice in Form-VIII both in Odia and English languages as required under sub-section (1) of Section 20 and Clause (a) of Section 38 by giving fifteen days' time to receive objections, if any, and shall also proclaim the same in the locality as mandated therein. Rule 32 of the said Rules further provides that the head of the concerned local body shall cause a copy of the extract sent to it under Clause (a) of Rule 31 to be affixed at the office notice board of the local body which must be put in a conspicuous part of the said building for a period not less than seven days.



6.3. The aforesaid provisions have their applicability in case of permitting the shifting of the license/shop from the existing site to another location. Once the aforesaid exercise is undertaken, the authority is to take a conscious decision as contemplated in the first proviso to clause (a) of Rule 31¹. Sub-rule (2) of Rule 33² of the said Rules creates a complete embargo in entertaining any objection or the suggestion after the lapse of the said period.

¹ Rule 31(a) stands as follows:

“31. Notice of the proposals for grant of licences or exclusive privilege to be given to certain authorities.—

Before the 1st November or such other date as the State Government may decide, the Collector shall,—

- (a) *affix the public notice both in Odia and English in Form No. VIII as required under sub-section (1) of Section 20 and clause (a) of Section 38 giving fifteen days’ time therein for receiving objections, if any, and proclaim the same in the locality by beat of drums as required under clause (b) thereof or by mike announcement in the locality, or by hosting of notice in the concerned district Website:*

Provided that the Collector shall indicate the local area of the shop for retail sale which shall be same as the location of the shop containing a list of Police Station limits, Grama Panchayats, Wards of Municipal Corporation, Municipality or Wards of Notified Area Council or village(s), as the case may be, convenient in each case so as to indicate the local area within which the exclusive privilege is proposed to be granted:

Provided further that in the Scheduled Areas, no such licence or exclusive privilege shall be granted without giving thirty days time as required under Section 27.”

² Rule 33 stands as follows:

“33. Objection to the proposal to be sent to the Collector.—

- (1) *All objections and suggestions referred to in rule 31 with respect to proposals contained in the list prepared under rule 30 shall be sent to the Collector within fifteen days from the date of expiry of the period of notice given in Form VIII and in case of cantonment, the Commanding officer shall inform the Collector within the said period whether he consents to the proposals.*
- (2) *Any objection and suggestion received after the said period shall be summarily rejected.*
- (3) *The list prepared and recommended by the Collector and submitted to the Excise Commissioner in accordance with sub-section (2) of Section 41 shall be submitted before the State Government for approval under Section 42.”*



6.4. At this juncture, it is pertinent to take note of a decision of Division Bench of this Court rendered *vide* judgment dated 8th September, 2025 in the case of *Sri Sandeep Raiguru Vrs. State of Odisha*, WP(C) No.23046 of 2025 as referred to and relied upon by the learned Senior Advocate for the petitioner. In the said judgment, this Court having taken into consideration the effect and applicability of Rules 31 to 33 and Rule 53 of the Rules, 2017 read with Section 26 of the Act, 2008 came to hold as follows:

*“6.2.*** Since the issue whether any order can be passed for shifting the shop from the existing site to another site on the basis of the objection raised by the villagers has been discussed hereinabove and we find that **such objection cannot be entertained after the statutory period expires and the renewal of the license is granted.**”*

6.5. This Court takes cognizance of the fact surfaced from License Form No.XLV (O.S.1) that being renewed, it remains valid “from 1st April, 2025 to 31st March, 2026”. The renewed licence has been issued by the Superintendent of Excise, Ganjam, Chatrapur on the approval by the Collector, Ganjam on 8th April, 2025. As is admitted by the Superintendent of Excise, Ganjam, Chatrapur in his instruction imparted to the learned Additional Government Advocate, it remains no disputed fact that the shop in question has been running in the



current location for last twenty years. Hence, in view of proviso to sub-section (1) of Section 41 of the Act, 2008, power could not have been exercised by the Superintendent of Excise contrary to what has been spelt out in Section 41 of the Act, 2008 read with Rule 53(5) of the Rules, 2017.

6.6. As is revealed from the copy of written instructions handed over to this Court by the learned Additional Government Advocate on the basis of objection raised by the public, the impugned letter dated 1st November, 2025 has come to be issued by the Superintendent of Excise, Ganjam, Chatrapur. Said instruction does not exposit as to compliance of procedure prescribed under Rules 31 to 33 of the Rules, 2017. Nothing surfaces from such instruction that the objection was received by the competent authority within stipulated period as envisaged in Rule 33(2) of the Rules, 2017. Objection received beyond the period stipulated is liable to be summarily rejected. This view is fortified by aforesaid judgment of this Court rendered in *Sri Sandeep Raiguru (supra)*. In judgment dated 11.12.2025 rendered by this Court in *Satya Sankar Samantaray Vs. The Principal Secretary, Department of Excise, Govt. of Odisha and others (WP(C) No.33555 of 2025)*, this Court held that if the authorities proceeded to grant the license, it cannot be said that they are unaware of the rigour of the legal provisions; rather in



the present case on approval of the Collector, the authority concerned renewed the license. As Rule 33(2) of the Rules, 2017 posits complete embargo, any objection subsequent to such grant shall be rejected summarily. Hence, no sanctity can be attached to the direction contained in the impugned Letter dated 01.11.2025 issued by the Superintendent of Excise.

7. On the aforesaid factual matrix as discussed hereinabove and in view of provisions of the Odisha Excise Act, 2008 and the Odisha Excise Rules, 2017 referred to hereinbefore and keeping abreast of the interpretation set forth in *Sri Sandeep Raiguru (supra)*, this Court is of the firm view that the Superintendent of Excise, Ganjam, Chatrapur has transgressed authority and jurisdiction by issue of letter dated 1st November, 2025 directing the petitioner to shift the shop from the current location. In view of Rule 53(5) of the Rules, 2017 coupled with explicit interdiction contained in Section 41 of the Act, 2008 and Rule 33(2) of the Rules, 2017, said direction in the impugned letter cannot be sustained.
8. In the aforesaid premises, the direction *vide* Letter dated 1st November, 2025 issued by the Superintendent of Excise, Ganjam, Chatrapur-opposite party No.4 (Annexure-1) from the District Excise Office, Ganjam, Chatrapur is set aside.



9. In the result, the writ petition stands disposed of. As a result of disposal of the writ petition, pending Interlocutory Application(s), if any, shall stand disposed of

(HARISH TANDON)
CHIEF JUSTICE

(MURAHARI SRI RAMAN)
JUDGE

High Court of Orissa, Cuttack
The 11th December, 2025/Laxmikant