IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.34041 of 2025

Santilata Mandal …. **Petitioner**

Represented by Adv.–
Mr. Laxmidhar Dash, Advocate

-Versus-

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

Represented by Adv.–
Mr. Debasis Tripathy, A.G.A. for the State

CORAM:
HON' BLE THE CHIEF JUSTICE
AND
HON'BLE MR. JUSTICE MURAHARI SRI RAMAN

ORDER

Order No. **11.12.2025**

02. 1. The instant writ petition is filed challenging the auction sale notice dated 20th November, 2025 issued by the OIC of Excise, Jatni Excise Station, Khordha for sale of diverse quantity of the country liquor of different quality which was confiscated having attempted to be sold beyond the licence area.

2. A proceeding under Section 71 (3) of the Odisha Excise Act, 2008 was initiated on the prayer of the OIC, Jatni Excise Station as the petitioner was attempting to transport 2165 liters of country

liquor on 4th February, 2025 in a vehicle without any valid permission and/or the authority granted by the concerned authority. The vehicle was intercepted and the goods were seized after following all the paraphernalia required in this regard. Since the said offence allegedly attracts the provisions under Section 71 of the said Act, the confiscation proceeding was initiated against the petitioner. On 6th September, 2025, the summons was also issued, which was duly served upon the petitioner and on the dates so mentioned in the said summons, the petitioner appeared through the present Advocate who filed the Vakalatnama on the said date and asked for an adjournment as the petitioner was suffering from viral fever and unable to remain present personally. The said proceeding was before the Superintendent of Excise and on taking a pragmatic view and on a humanitarian ground that the petitioner was suffering from viral fever, the time was granted till 19th September, 2025. On the said returnable date, there was no appearance on behalf of the petitioner and to give further opportunity, another date was fixed as 26th September, 2025. The Superintendent of Excise, Khordha passed the order on the event date and disposed of the proceeding by directing the OIC, Jatni Excise Station to sell the seized country liquor through auction by following the established procedure after the appeal period is over.

3. The aforesaid order passed by the Superintendent of Excise is not assailed in the instant writ petition. The case of the petitioner in the instant writ petition is that Section 71 (3) of the said Act mandates the steps to be taken under the said provision by Collector or authorized officer not below the rank of the Superintendent of Excise and, therefore, OIC of Jatni Excise Station being a person below the rank of the Superintendent of Excise is not competent to pass the order. In other words, it is sought to be contended that though the hearing was conducted by the Superintendent of Excise, but in fact, the order is passed by an Officer below the said rank and, therefore, such order is *per se* illegal and liable to be quashed and set aside.

4. On the day, when the writ petition was moved for admission perceiving the aforesaid point to have clinched the issue, the direction was passed upon the learned Additional Government Advocate to take instructions and file the relevant documents in the form of a counter affidavit. The counter affidavit is filed today containing the relevant documents having material bearing on the

issues involved in the instant writ petition and a copy whereof is served upon the learned counsel appearing for the petitioner.

4.1. It is apparent from the document annexed to the counter affidavit, more particularly, the orders passed in a confiscation proceeding initiated before the Superintendent of Excise that the petitioner after receiving the summons appeared before the said authority and sought for adjournment on the ground that the petitioner was suffering from viral fever. Interestingly, it is averred in the writ petition that since the petitioner was on pilgrimage, she could not secure her presence in the said confiscation proceeding. It would further be relevant to record that the learned Advocate who appeared in the confiscation proceeding is the Advocate in the instant writ petition. A meaningful reading of the averments made in the writ petition would reveal that the fact which was known to the learned Advocate is sought to be dislodged by making an incorrect statement of facts and tailored to shut the purpose which could not be achieved in a direct manner.

5. Be that as it may, the petitioner participated in the confiscation proceeding, yet the challenge to a final order has not been made. Therefore, this Court can safely proceed on the basis that the said order stands against the petitioner or in other words, is staring at her

face. The moment the Superintendent of Excise conducted the proceeding and disposed of the same, mere communication by an Officer below the rank of said Superintendent of Excise cannot be said to be an order passed by the said authority. The communication of an order of a competent authority is paramount and it cannot, therefore, be construed that the said order is passed by the communicating officer and not by a competent authority.

6. We, thus, do not find the stand of the petitioner that the order is passed by the OIC, Jatni Excise Station and not the Superintendent of Excise being a competent authority under Section 71 of the said Act. Apart from the same, a litigant should not be blessed with the order by suppressing the material facts. The facts which have material bearing in relation to a subject dispute must be clearly and lucidly incorporated in the pleadings. The suppression of fact should be viewed zealously and seriously and a person who does not come to the Court with clean hands does not deserve any equity to come in its rescue. From whatever angle we look at, since the auction sale notice is published in terms of the order dated 26th September, 2025 passed by the Superintendent of Excise, the same cannot be said to be perverse, erroneous, illegal and/or invalid.

7. We, thus, do not find any merit in the instant writ petition. The same is hereby dismissed with cost of Rs.25,000/- to be deposited by the petitioner with the Odisha State Legal Services Authority within four weeks to be utilized for the benefit of the juvenile.

(Harish Tandon)
Chief Justice

(M.S. Raman)
Judge

S.K. Guin/PA