

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 28.10.2013

+ W.P.(C) 6758/2013
KALI CHARAN Petitioner

Through: Mr. Tarun Sharma, Adv.
versus

COMMISSIONER OF DELHI POLICE Respondent
Through: Ms. Zubeda Begum, Standing
Counsel with Ms. Sana Ansari,
Adv.

+ W.P.(C) 6781/2013
MAHINDER GUPTA Petitioner

Through: Mr. Tarun Sharma, Adv.
versus

COMMISSIONER OF DELHI POLICE Respondent
Through: Ms. Zubeda Begum, Standing
Counsel with Ms. Sana Ansari,
Adv.

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (Oral)

The respondent-Commissioner of Police, Delhi invited applications for grant of temporary licences for selling fire crackers in Delhi during the period from 11.10.2013 to 05.11.2013. The petitioners before this Court applied for grant of such a licence in terms of Rule 113 of the Explosives Rules. The application of the petitioners for grant of such licence were, however, rejected vide two separate orders both dated 24.10.2013 on the

ground that a shop exists within the range of 15 meters from the respective shop of the petitioners.

Being aggrieved from the aforesaid rejection, the petitioners are before this Court seeking the following relief:-

“a. allow the present writ petition in favour of the petitioner and against the respondent, Commission of Delhi Police;

b. issue the appropriate writs of mandamus & certiorari or directions to the respondent, Commissioner of Delhi Police, for the grant of a Temporary Fire Works License in favour of the Petitioner by setting aside the arbitrary, discriminatory & illegal impugned order passed by the Deputy Commissioner of Police, Central District, Delhi Police dated 24.10.2013 for the reason of the same being in violation of the Articles-14, 19 (1) (g) & 21 of the Constitution of India.”

2. The learned Standing Counsel for the Government of NCT of Delhi, who appears on advance notice, justifies the rejection in view of the provisions of Rule 86(3) of Explosives Rules. The petitioners, on the other hand, rely upon the orders of Hon’ble Supreme Court dated 22.10.1993 and 01.11.1993 in SLP(C) No. 17327-28/1993.

3. A perusal of the order of the Hon’ble Supreme Court dated 22.10.1993 would show that the appellants before the Apex Court had been selling fire crackers between Dussehra and Diwali in Sadar Bazar and Jama Masjid are on the strength of temporary licences granted to them by Delhi Police. Pursuant to a revised policy, formulated by Delhi Police,

they were denied temporary licence for sale of fire crackers in the regular shops and were directed to put temporary stalls in an adjacent park for the sale of fire crackers. The permanent licence holders were, however, allowed to carry on the business of selling fire crackers in their respective shops. Two writ petitions were filed challenging the refusal to grant permanent licence to sell fire crackers. The petitioners were not parties to the said petitions though they intervened on learning of the matter. The respondents before the High Court relied upon a revised policy whereby grant of temporary licence for sale of fire crackers at regular shops had been discontinued. The High Court dismissed the aforesaid writ petitions making certain observations in support of the revised policy. Pursuant thereto, the appellants moved the Supreme Court by way of Special Leave Petitions. The Apex Court directed the authorities to consider the request for grant of temporary licence to pucca shop owners in Sadar Bazar and Jama Masjid areas provided the shopkeepers provided in their shops – (a) sufficient number of sand bags as may be directed by the authority; (b) a water tank of the capacity as may be determined by the authority; (c) one or more fire extinguishers, as may be directed by the authority; (d) restriction on stock to be kept so as not to exceed the quantity allowed by the authority; and (e) such other precautions as the authority may consider appropriate to direct.

It was, however, directed that the temporary licenses will be issued to only those shop owners whose shops were not adjacent to shops in which inflammable or highly combustible products were sold.

4. Pursuant to the aforesaid order of the Apex Court, the authorities issued a circular imposing conditions *inter alia* that the premises to be used for sale of crackers, etc. shall be at a minimum distance of fifteen metres from any such premises used for storage of similar explosives and hazardous materials. When the matter was taken up by the Hon'ble Supreme Court, the authorities agreed to issue instructions to the effect that temporary licenses were not to be denied on the ground that the cracker shops were adjacent to each other. The contention of the learned counsel for the petitioners is that in view of the aforesaid statement made before the Apex Court the respondents cannot deny license on the ground that there is another shop licensed to sell fire crackers within a distance of fifteen metres from the shops of the petitioners.

5. The learned Standing Counsel, however, submits that the directions given by the Apex Court were confined to Sadar Bazar area and applied only in respect of pucca shops, wherein temporary licences for sale of fire crackers were sought. She further submits that neither the shops of the petitioners are situated in Sadar Bazar nor are they occupying pucca shops and, therefore, the aforesaid decision does not apply to the petitioners.

6. The learned counsel for the petitioners also relies upon the decision of this Court in WP (C) No.7020/2012 titled Ajay Goel Vs. Commissioner of Delhi Police decided on 7.11.2012. In the above referred case the petitioner before this Court was denied license on the ground that there was a shop within fifteen metres of his shop, which had been issued a permanent licence for selling crackers and, therefore, grant of licence to him would entail violation of Rule 86 (3) of the Explosives Rules, 2008.

Allowing the writ petition, this Court *inter alia* held as under:

“I have perused the order of the Supreme Court dated 22.10.1993. Even though it refers to the traders, who were before the Supreme Court – there is no exception carved out which would suggest that its directions would not apply to traders, who are located in other parts of the city.....”

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“On a combined reading of the aforesaid two orders, there is no doubt that, temporary license can be issued even though the minimum distance of fifteen metres is not maintained. Therefore, according to me, the petitioner has a case for grant of a temporary license.”

7. In view of the aforesaid decision of this Court, the respondents could not have rejected the applications of the petitioners on the sole ground that there existed another shop selling fire crackers within a distance of fifteen metres from their respective shops.

The learned Standing Counsel submits that the Hon’ble Supreme Court while directing consideration of the request for grant of temporary

licence to pucca shop owners in Sadar Bazar and Jama Masjid areas had imposed certain conditions which those persons were required to fulfill. If that is the position nothing prevents the respondents from imposing such safety related conditions as they may deem appropriate while granting temporary licence to temporary shops. The respondents in the event of granting temporary licences to the petitioners in any case have to impose the conditions stipulated in Rule 84 of the Explosives Rules, 2008.

8. Rule 86 (3) of the Explosives Rules, 2008, on which reliance is placed by the respondents reads as under:

“86. Safety distances to be maintained

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(3) Shop – the shop licensed for storage and sale of small arms nitro-compound, fireworks or safety fuse shall be at a distance of minimum fifteen metres from any such premises or any other premises used for storage of similar explosives, flammable or hazardous materials.”

A careful examination of the aforesaid sub-rule would show that the expression used in the sub-rule is “shop” and not ‘temporary shops’ or ‘shops including temporary shops’. Rule 84 (2) which applies to temporary shops provides that sheds for possession and sale of fireworks shall be at a distance of at least three metres from each other and fifty metres from any protected work. No such condition, however, is found in Rule 83 which deals with grant of license in pucca shops, i.e, the shops

constructed of brick, stone or concrete. Therefore, it appears to me that sub-rule (3) of Rule 86 on which reliance is placed by the respondents applies to pucca shops and not to temporary shops. If sub-rule (3) of Rule 86 is applied to temporary shops as well there would be a conflict between Rule 84 (2) on the one hand and Rule 86 (3) on the other since the former stipulates a distance of three metres between the two sheds wherein fire crackers are to be stored and sold whereas sub-rule (3) of Rule 86 stipulates a distance of minimum fifteen metres between two shops licensed for storage and sale of fireworks.

9. For the reasons stated hereinabove, the impugned orders dated 24.10.2013 are set aside and the respondents are directed to pass fresh orders on or before 30.10.2013 on the applications of the petitioners for grant of temporary license to sell fire crackers in temporary shops.

The writ petitions stand disposed of.

Dasti under the signatures of the Court Master.

OCTOBER 28, 2013
BG/b'nesh

V.K. JAIN, J.