

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

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Date of decision: 3rd November, 2015

+ W.P.(C) NO.10317/2015 & CM No.25720/2015 (for directions)

MANISHA SHARMA

..... Petitioner

Through: Mr. Tarun Sharma & Ms. Boudh
Prabha, Advs.

Versus

COMMISSIONER OF DELHI POLICE

..... Respondent

Through: Mr. Peeyoosh Kalra &
Ms. Mahua Kalra, Advs.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

CM No.25721/2015 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

W.P.(C) No.10317/2015

3. The petition impugns the order dated 31st October, 2015 of the respondent Commissioner of Police, Delhi rejecting the application of the petitioner for grant of Temporary Fireworks Licence for sale of fire crackers on the occasion of Diwali of the year 2015 from shop in property No.E-266, Gali No.3, Main Road, Shastri Nagar, Delhi on the following grounds:

- “1. The proposed Shop is not safe and there is transformer in the vicinity. Besides people have got lot of resentment & insecurity as regards selling of fireworks in the shop.”

4. Though the impugned order itself intimated the petitioner of the availability of the remedy of appeal thereagainst but the said remedy has not been availed; the counsel for the petitioner states that the licence was applied for the period 20th October, 2015 to 13th November, 2015 and since the rejection is dated 31st October, 2015, if the petitioner avails of the appeal remedy, consideration and disposal whereof takes time, the entire period till 13th November, 2015 will lapse and the whole matter would be rendered infructuous.

5. The counsel for the petitioner has found fault with the aforesaid reasoning for rejection of the application of the petitioner by contending that the petitioner, as is mandatorily required to be submitted along with the application, had submitted a No Objection Certificate (NOC) from the Delhi Fire Service (DFS) and has in Court handed over a copy of the said NOC. The said NOC is subject *inter alia* to the condition that no other trade is permitted in the said shop. The counsel for the petitioner on enquiry states that the said shop is lying vacant and no other trade is being carried on therein. It is argued that once the DFS has given NOC, the respondents could not have denied licence to the petitioner on the grounds of fire safety, as has been done.

6. With respect to the other ground on which application has been rejected, of existence of a transformer in the vicinity, it is contended that the said transformer has existed for several years and notwithstanding the same, in the previous year licence was granted with respect to the said shop. It is also argued that in another shop in same property No.E-266, Shastri Nagar,

Delhi, licence has been given to one Ajay Yadav, again notwithstanding the said transformer and it is rather contended that the shop of Ajay Yadav is facing the transformer.

7. The General Conditions for grant of such permission annexed by the petitioner herself along with her writ petition contain a condition that the shop should not be within 15 meters distance from any shop or premises used for storage of any explosive, inflammable or hazardous material. The counsel for the petitioner, on enquiry as to how the existence of shop of aforesaid Ajay Yadav in the same property would not itself be a ground for denying permission to the petitioner, contends that the said condition has already been struck down and is no longer applicable. Attention is drawn to the order dated 1st November, 1993 of the Supreme Court in SLP(C) Nos.17327-28/1993 titled ***Sadar Bazar Fire Works (Pucca Shop) Association (Regd.) Vs. M/s Pankaj Traders*** where the statement of the respondents therein that appropriate instructions will be issued so that temporary licences are not denied on the ground that the cracker shops are adjacent to each other, is recorded. It is further contended that the said judgment has been followed by this Court in similar petitions of previous years.

8. From the aforesaid order dated 1st November, 1993 of the Supreme Court, I am unable to hold that the condition aforesaid has been struck down. The same, even otherwise, continues to exist in the terms and conditions published for this year. The counsel for respondent appearing on advance notice also states that as per the standing order No.75/2012, the condition

aforesaid is still in force. I find that the said standing order has not been considered in the orders / judgment dated 7th November, 2012 in W.P.(C) No.7020/2012 titled ***Ajay Goel Vs. Commissioner of Delhi Police***, dated 28th October, 2013 in W.P.(C) No.6758/2013 titled ***Kali Charan Vs. Commissioner of Delhi Police*** and dated 14th October, 2014 in W.P.(C) No.7036/2014 titled ***Davinder Singh Vs. Commissioner of Delhi Police*** of the previous years relied upon by the counsel for the petitioner, which undoubtedly have proceeded to grant temporary licence, notwithstanding the said condition and without applying the same. It is however found that at least in ***Ajay Goel*** supra, the view taken in this regard is qualified as not conclusive but only *prima facie*.

9. Per contra, the counsel for the respondent appearing on advance notice has contended that the application of the petitioner has been rejected after consideration of all the facts and though earlier the NOC with respect to the said premises was refused by the DFS but has subsequently been granted. It is also stated that after assessing the situation at the site and the sentiments of the people and the residents, the application has been rejected.

10. On enquiry, it is informed that the locality in which the shop aforesaid is situated is of mixed land use with shops on the ground floor and the residences on the upper floors. The counsel for the petitioner however at the time of dictation states that there are no residences on the upper floors, particularly not above the subject shop. The counsel for the respondent, on instructions, states that there are residences on the upper floors.

11. The nature of the relief claimed in the petition is such that if notice of the petition were to be issued and counter affidavit called for, the relief would become infructuous. In fact, it is for this very reason that the petitioner instead of availing of the appellate remedy admittedly available has approached this Court in its jurisdiction under Article 226 of the Constitution of India. The decision thus has to be taken at this stage only.

12. In my opinion, none can claim a right to carry on business of sale/retail of firecrackers. Firecrackers clearly fall under the Explosives Act 1884 and are hazardous in nature; they emanate sound and foul gases and fine particles in the atmosphere. The earlier orders/judgments (supra) relied upon by the counsel for the petitioner have also dealt with the subject on the anvil of the said law only. As per the Explosives Act the business in firecrackers cannot be carried on without a licence. It has been held by the Supreme Court in *Har Shankar Vs. The Deputy Excise and Taxation Commissioner* (1975) 1 SCC 737 in the context of trades which are injurious to the health and welfare of the public viz. of liquor and/or drugs that citizen has neither a natural or a fundamental right to carry on trade or business therein. It has been held that elimination and exclusion from business is inherent in the nature of such business and none has an absolute right to deal therein and that all kinds of dealings therein, by their inherent nature, have always been treated as a class by themselves in all civilized communities. This was reiterated in *P.N. Krishna Lal Vs. Government of Kerala* 1995 Supp(2) SCC 187 and in *State of Punjab Vs. Devans Modern Breweries Ltd.* (2004) 11 SCC 26.

13. I have also considered whether there can be any religious right entitled to constitutional protection for bursting firecrackers and axiomatically to carry on business therein on the occasion of Diwali. I have not found the firecrackers to be having any sanctity in religious text. The festival of Diwali though called a festival of lights has religious context only in illuminating the buildings of city/town traditionally with the 'diyas' which over a period of time got substituted with candles. There is nothing to suggest that bursting of firecrackers is related to any religious tenet. It has been held in **Javed Vs. State of Haryana** (2003) 8 SCC 369 and **Dr. M. Ismail Faruqui Vs. Union of India** (1994) 6 SCC 360 that the protection under Articles 25 and 26 of the Constitution is with respect to religious practice which forms an essential and integral part of the religion and that a practice may be religious practice but not an essential and integral part of the religion. Moreover, the said freedom is subject to public order, morality and health. Supreme Court in, **In Re: Noise Pollution** (2005) 5 SCC 733 also has held that the festival of Diwali is mainly associated with 'pooja' performed and not with firecrackers; in no religious text book it is written that Diwali has to be celebrated by bursting firecrackers; Diwali is considered as a festival of lights, not of noises and that shelter in the name of religion cannot be sought for, for bursting firecrackers.

14. Else the law as has developed in relation to licence under the Arms Act, 1951 is that the assessment of the Licensing Authority whether an applicant is entitled or not entitled to an arm licence is a question of fact and which ought not to be interfered in exercise of jurisdiction under Article 226. It has been held that the assessment of the Licensing Authority whether there

is a threat perception to the applicant, to entitle him to an arm licence is a question of fact and with which the High Courts in exercise of jurisdiction under Article 226 should ordinarily not interfere. It has similarly been held that there is no fundamental right to possess an arm. Reference in this regard can be made to my judgments in *Dharambir Khattar Vs. Government of NCT of Delhi* (dated 5th October, 2011 in W.P.(C) No.7360/2011) and in *Parveen Kumar Beniwal Vs. Government of NCT of Delhi* MANU/DE/1304/2015. In my view, the said principle would equally apply to the assessment of the licensing authority in the present case. The respondent, acting as licensing authority, has clearly opined that there is a lot of resentment and insecurity in the minds of people (obviously of the locality) as regards selling of fireworks in the shop. All that the counsel for the petitioner has argued in this respect is that no particulars in this regard have been given and / or the animosity of others with the petitioner cannot be the cause for denying licence to the petitioner. I am unable to agree. Just like the licensing authority is entitled to assess threat perception, so is it empowered to assess 'resentment'. Moreover, if particulars of neighbours of the petitioner from whom enquiry has been made, are to be given, it may itself become a cause of breach of peace in the locality. Such enquiries are always discreet and confidential.

15. In this view of the matter, I am of the opinion that no interference with the assessment made by the respondent, being the Licensing Authority, as to be entitlement of the petitioner to a temporary licence for sale of firecrackers is called for.

16. I may add that it is not as if firecrackers are capable of any less harm than an arm within the meaning of Arms Act. Owing to less stringent control on use, firecrackers are available far more easily than an arm and are rampantly used and which has over the years resulted in incidents of fire and injury caused by firecrackers, on the occasion of Diwali, having become a routine affair and multiplying annually. So much so that the city hospitals have to gear up for the onslaught and to be in a state of preparedness, especially on the night of Diwali. Certainly, none can claim a right to burst firecrackers at the cost of injury to another. I may in this regard notice that with the population of the city of Delhi ever increasing, most of the population is living, not even in *pucca* or fireproof houses but in tenements with extensive use of highly inflammable material, to protect against rain and cold. Even those who are able to afford *pucca* houses are largely packed into multistoried buildings like sardines with no open spaces whatsoever; often found to be bursting firecrackers from the windowsills /tiny balconies of their flats and which firecrackers have propensity to enter and explode in a neighbour's house/roof. It is for this reason only that several other countries faced with the same issue have prohibited bursting/use of firecrackers within the city area and have earmarked open spaces particularly water fronts, where the fireworks can be displayed.

17. Leave apart the aforesaid, there is yet another reason for me to be of the opinion that it is not a fit case for grant of relief claimed to the petitioner, even if the petitioner were to be entitled thereto. It is the settled position in law [see *DDA Vs. Manav Shiksha Samiti (Regd.)* MANU/DE/0815/2012 (DB)] that a Writ Court can in public interest refuse to grant relief even if

the petitioner were to be found to be entitled thereto. I am of the view that it is not in public interest for this Court to direct the Authorities concerned to grant the petitioner temporary licence to sell firecrackers when the Authorities have refused the same.

18. I say so, besides for the reasons already given, because bursting of firecrackers impact environment in a dual way. Firstly they emanate fine particles and foul gases affecting the quality of air in the city and secondly they emanate noise which also in *In Re: Noise Pollution* supra has been held to be a contaminant of environment.

18A. When fireworks are set off, chemicals used in their composition react to ignite and propel the explosives with a resultant noticeable and odorous cloud of Particle Matter in the atmosphere, inhalation whereof is one of the most important routes of exposure to elevated concentrations of these emissions; the air pollutants also cause formation of reactive oxygen species which in turn induces oxidative stress in the lungs resulting in a powerful cellular and mediator inflammatory response. The hazardous chemicals present in firecrackers also spread in environment causing skin problems, itching, rashes, sinusitis and eye infections.

19. The city of Delhi today is severally impacted environmentally, with the newspapers reporting the air quality to have attained dangerous standards severally affecting the breathing of citizens, owing to burning of paddy in agricultural lands in neighbouring States. The cases of breathing ailments are on the ascendancy, frequently become fatal and which was unheard of in earlier times when the practice of bursting firecrackers as an expression of

joy may have commenced. In spite of the Supreme Court having limited number of hours during which the firecrackers can be burst/displayed on the festival of Diwali, the same remains more on paper than in fact, owing to the implicit difficulties in enforcement thereof. The only way of enforcement is to limit the availability of firecrackers in the city.

20. It has been held in *ANZ Grindlays Bank Vs. The Commissioner MCD* MANU/DE/0789/1995, reiterated in *M.C. Mehta Vs. UOI* (2006) 3 SCC 399 that it is the duty not only of the State but also of every citizen, to maintain hygienic environment; there is a constitutional imperative on the State Government and the Municipalities to ensure safe environment and to take adequate measures to protect the natural environment.

21. I am of the view that the judgments of the yesteryears cannot be precedent in matters affecting the environment, when the concern for environment is growing with the time and assuming alarming proportion. For the sake of following precedent we cannot refuse to take a step, taking of which is imminent today and not taking of which may be too late. There is today a public outcry with respect to the bursting of firecrackers. The petitioner, in a petition under Article 226 of the Constitution of India, can be declined the relief if the grant thereof is found to be against the public interest.

22. I am conscious of the petition filed in public interest on behalf of three minor children filed in the Supreme Court in this context and have perused the orders dated 16th October, 2015, 27th October, 2015 and 28th October,

2015 therein (W.P.(C) No.728/2015 titled *Arjun Gopal Vs. Union of India*) and do not find the view herein taken to be in conflict therewith.

23. Before parting, a word of caution for the respondents. The fact that this Court is not interfering with refusal by the respondents of Temporary Fireworks Licence to the petitioner for the reasons aforesaid should not be taken by the respondents as a freedom to choose, without following any rational criteria, to whom such licence is to be granted and to whom it is not to be granted. If this Court at any time finds that the respondents are indulging in a policy of pick and choose for extraneous reasons, this Court would be compelled to interfere.

24. I therefore do not find the petitioner entitled to relief.

The petition is dismissed.

No costs.

Dasti under signature of Court Master.

RAJIV SAHAI ENDLAW, J

NOVEMBER 03, 2015
'gsr/M'.