

GAHC010263902022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/8262/2022

MANOJ KUMAR ROY
S/O- SRI MANTU ROY,
RESIDENT OF VILLAGE BIRUBARI UDAYPUR,
GOPINATH NATH, GUWAHATI,
DISTRICT- KAMRUP(M), ASSAM,
PIN- 781016.

VERSUS

GUWAHATI MUNICIPAL CORPORATION AND 2 ORS
REPRESENTED BY ITS COMMISSIONER,
PANBAZAR, GUWAHATI, ASSAM,
PIN- 781001.

2:THE COMMISSIONER
GUWAHATI MUNICIPAL CORPORATION
PANBAZAR
GUWAHATI
ASSAM

PIN- 781001.

3:DEPUTY ENFORCEMENT OFFICER
GUWAHATI MUNICIPAL CORPORATION
PANBAZAR
GUWAHATI
ASSAM

PIN- 781001

Advocate for the Petitioner : MR S BORTHAKUR

Advocate for the Respondent : SC, GMC

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 29-08-2023

Heard Mr. S. Dey, learned counsel for the writ petitioner. Also heard Mr. S. Bora, learned standing counsel, GMC appearing for all the respondents.

The facts of this case lie in a very narrow campus. The writ petitioner herein is the proprietor of M/s M.K. Stationers situated at Ward No. 18, Birubari, Guwahati in the district of Kamrup (M). The petitioner is operating his shop on the strength of a valid trade license issued by the GMC authorities. With a view to sell fire-crackers during the 'Diwali' festival of the year 2022, the petitioner had applied for a temporary fire-crackers license, which was issued to him on 22-10-2022.

As per the expressed terms of the temporary license, the petitioner was allowed to purchase and possess the fire-crackers from 20-10-2022 to 26-10-2022 and the license was to remain in force only for those 06 days. It may be mentioned herein that 'Diwali' in the year 2022, fell on 24-10-2022. As per the terms of procurement of the fire-crackers, if there were any unsold fire-crackers after the festival was over, the petitioner had the option to return the same to the stockiest. However, not to speak of returning the fire-crackers within the validity period of temporary license, the petitioner had admittedly failed to return the unsold fire-crackers even 20 days after the expiry of the fire-crackers

license. The GMC authorities, on receipt of a complaint from the "Birubari Udaypur Unnayan Samity" on 11-11-2022 had proceeded to the shop of the petitioner and seized the unsold fire-crackers stored in his shop, which was worth Rs. 2,00,000/- (approximately), on 16-11-2022.

Aggrieved by the seizure of the fire-crackers, the petitioner has approached this Court, *inter alia*, contending that the impugned action of the GMC authorities is dehors the provision of the Explosive Act, 1884 and the rules framed there-under and hence, liable to be declared so by this Court. The petitioner's case is that due to the rains during the 'Diwali' of the year 2022, the fire-crackers procured by him on credit basis had remained unsold. The petitioner had contacted the stockiest to return the unsold fire-crackers but since the stockiest/ whole-seller had asked him to hold on to the articles, there was delay in return of the same.

Mr. S. Bora, learned standing counsel, GMC, on the other hand, submits that the action taken by the GMC authorities is on the basis of a complaint received from the people of the locality. The seizure of the fire-crackers was made by keeping in mind the question of fire hazard and also on account of the fact that the petitioner was not entitled to retain possession of the same, after the expiry of the temporary fire-crackers license. Mr. Bora, however, submits that if the petitioner wants to return the seized fire-crackers to the whole-seller, the authorities would consider his request, if proper application is made to that effect.

Since the stand of the petitioner's counsel, Mr. S. Dey is also to the effect that his client does not wish to retain the fire-crackers but is under an obligation to return the

unsold fire-crackers to the stockiest/ whole-seller and in view of the stand taken by Mr. Bora, learned standing counsel, GMC, as noticed above, this Court is of the considered opinion that the larger question of legality and validity of the action initiated by the GMC authorities in seizing the unsold fire-crackers on 16-11-2022 need not detain this Court and the said aspect of the matter can be kept open for being decided in an appropriate proceeding, as and when the occasion arise. Since the respondents are willing to permit the petitioner to return the seized fire-crackers to the stockiest/ whole-seller, this writ petition is being disposed of with the following direction:-

1. Within one (01) week from today the petitioner shall submit a representation before the respondent authorities mentioning the name of the stockiest/ whole-seller(s) to which, he proposes to return the unsold fire-crackers.
2. On receipt of such representation, the respondent shall allow the petitioner to return the unsold fire-crackers directly to the concerned whole-seller/ stockiest.
3. Petitioner shall also furnish an undertaking that save and except returning the unsold fire-crackers to the stockiest/ whole-seller, he will not retain any part of the same without obtaining prior license from the GMC authorities.

Writ petition stands closed.

JUDGE

GS

Comparing Assistant