

THE HON'BLE SRI JUSTICE A.V. SETHA SAI

WRIT PETITION No.33909 of 2012

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking the following relief:

“to issue writ or direction particularly in the nature of Mandamus or any other appropriate writ, A). To declare the proceedings in Rc.No.C3/511/M/2011, dated 22.10.2011, on the file of the 2nd respondent as illegal, void, arbitrary and violating the fundamental rights of the petitioner guaranteed under Article 19 of the constitution of India and consequently, set-aside the same. B). Consequently, to direct the respondents 2 to 4 not to interfere with the business of the petitioner carrying on in the premises situated in R.S.No.53/6 of Kesarapalli village, Gannavaram mandal, Krishna District, pursuant to the licence No. E/SE/AP/24/258 (E42427), dated 17.8.2009, on the file of the 1st respondent.”

Heard Sri V.R. Avula, learned counsel for the petitioner and learned Government Pleaders for Revenue and Home for respondents, apart from perusing the material available before this Court.

The respondent authorities granted licence in favour of the petitioner for carrying on business in fire Crackers. The Collector and District Magistrate, Krishna, Machilipatnam issued a notice bearing Rc.No.C3/511/M/2010, dated 18-10-2011 calling upon the petitioner to show cause as to why the no objection certificate issued earlier in favour of the petitioner for carrying on the said business should not be cancelled. By virtue of the said notice the 2nd respondent granted three (3) days time to offer explanation from the date of receipt of the said show cause notice. Thereafter

the 2nd respondent by way of an impugned order vide Rc.C3/511/M/2011, dated 22-10-2011 cancelled the no objection certificate issued earlier to the petitioner in exercise of the powers conferred under Rule 115 (1) (c) of Explosive Rules, 2008.

The present writ petition calls in question the validity and legal sustainability of the said order of cancellation of no objection passed by the 2nd respondent.

This Court, while ordering *rule nisi* on 02-11-2012 in W.P.M.P.No.43146 of 2012, granted interim direction, directing the respondents 2 to 4 not to interfere with the business of the petitioner. Responding to the *rule nisi* issued by this Court, counter-affidavit has been filed on behalf of the 1st respondent, opposing the writ petition.

The information available before this Court manifestly discloses that the 2nd respondent – District Collector vide notice bearing Rc.No.C3/511/M/2010, dated 18-10-2011 directed the petitioner herein to show cause as to why the no objection certificate granted earlier should not be cancelled while granting three (3) days time from the date of receipt of such notice for offering explanation.

It is the principal contention of the learned counsel for the petitioner that the petitioner received the show cause notice on 21-10-2011 and when she approached the office of the 2nd respondent on 22-10-2011 to submit the explanation she was surprised to notice that the 2nd respondent vide Rc.No.C3/511/M/2011, dated

22-10-2011 passed the impugned order, cancelling the no objection certificate issued earlier.

According to learned counsel for the petitioner, the said action on the part of the respondent authorities is a patent violation of the principles of natural justice.

Even according to the 2nd respondent, as per the impugned order, show cause notice was served on the petitioner on 19-10-2011.

It is further clear from the material on record that even without waiting for three (3) clear days from the said date i.e., 19-10-2011 the 2nd respondent passed the impugned order on 22-10-2011. It is also significant to note that the averment made by the writ petitioner in the writ affidavit that she received show cause notice only on 21-10-2011 is not disputed by the 2nd respondent by way of filing a counter-affidavit. Therefore, it is succinctly clear from the above that the 2nd respondent resorted to the impugned action patently in violation of the principles of natural justice.

It is settled and well established principle of law that any action of the authorities, which has civil consequences must necessarily be preceded by notice and proper opportunity to the persons likely to be affected by the said action.

In the instant case, the adherence to the said principles is conspicuously absent. In view of the above reasons, the impugned order cannot be sustained in the eye of law.

For the aforesaid reasons, the writ petition is allowed, setting aside the order passed by the 2nd respondent vide proceedings Rc.No.C3/511/M/2011, dated 22-10-2011. However, it is open for the respondent authorities to take action afresh after giving notice and opportunity of being heard to the petitioner herein.

The Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed. There shall be no order as to costs.

A.V. SESA SAI, J

December 16, 2015

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