



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.10.2016

CORAM:

THE HONOURABLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

W.P. (MD) .No. 14217 of 2014

S.M.Anantha Murugan
Advocate
S/o.S.Mariappan
Jamin Salvarpatti
Narayanapuram Post
Sivakasi East,
Virudhunagar District

... Petitioner

Vs.

- 1.The Union of India,
Rep. by its Cabinet Secretary,
Rastrapathy Bhavan
Union Secretariat, New Delhi.
- 2.The Union of India,
Rep. by its Secretary,
Ministry of Commerce and Industry,
Department Industrial Policy and Promotion,
Union Secretariat, New Delhi.
- 3.The Union of India,
Rep. by its Joint Secretary
Ministry of Commerce and Industry,
Department Industrial Policy and Promotion,
Union Secretariat, New Delhi.
- 4.The Chief Controller of Explosives,
A Block, CGO Complex, Fifth Floor,
Seminary Hills,
Nagpur, Maharashtra.
- 5.The State of Tamil Nadu
Rep. by its Chief Secretary,
Secretariat, St. George, Fort, Chennai.
- 6.The State of Tamil Nadu,
Rep. by its Principal Secretary,
Department of Industries,
St. George Fort, Chennai.
- 7.The Joint Chief Controller of Explosives
South Circle No.140
Rukmini Laxmipati Road,
Egmore, Chennai.
Tamil Nadu.

... Respondents



PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration declaring the 2nd respondent original notification Non.26(10)/2012-Expls, dated 04.06.2013 as null and void and ultra vires Sections 5,6,6-A, 14,17, 17A and 18 of the Explosives Act and Rules 43 and 45 of the Explosives Rules, 2008.

For Petitioner : Mr.S.M.Anantha Murugan
Petitioner in person.

For Respondents : Mr.G.R.Swaminathan
Assistant Solicitor General of India
for R.Murugappan for R1 to 4 & 7
Mr.M.Govindan
Special Government Pleader
Respondents 5 & 6

O R D E R

[Order of the Court was made BY **The Hon'ble The Chief Justice**]

We are concerned with the Explosives Act, 1884 (hereinafter referred to as 'the said Act') and the Explosives Rules, 2008 (hereinafter referred to as 'the said Rules'), made thereunder, in a public interest litigation filed by an Advocate and not by an affected person. We may note that there is no challenge to any particular provision of the Act or any of the Government Authorities, but *per se* the delegation of power exercised in pursuance of the notification dated 04.06.2013. It is this notification which is sought to be assailed.

2. The notification in question reads as under:

"No.26(10)/2012-Expls - whereas no license for import or export of explosives by land shall be granted without the previous sanction of the Central Government in each case, wherein the Central Government may impose conditions and restrictions in consultation with the chief Controller under rule 43 of the Explosives Rules, 2008.

2.Now, therefore, in exercise of the powers conferred by section 17A of the Explosives Act, 1884, the Central Government hereby delegates the power and functions vested in it under rule 43 of the Explosives Rules, 2008 to the Joint Secretary (in-charge of Explosives Division), Department of Industrial Policy and Promotion;

3.Provided that the Central Government may revoke such delegation of powers or may itself exercise the powers under the said section, if in its opinion such a course of action is necessary in the public interest."



3. The power of delegation is incorporated in Section 17-A of the said Act, which reads as under:

"17-A. Power to delegate. - The Central Government may, by notification in the official gazette, direct that any power or function which may be exercised or performed by it under this Act other than the power under sections 5,6,6A, 14 and 17 may, in relation to such matters and subject to such conditions, if any, as it may specify in the notification, be exercised or performed also by -

(a) such officer or authority subordinate to the Central Government, or

(b) such State Government or such officer or authority subordinate to the State Government."

4. In terms of the aforesaid notification, in exercise of the power conferred under Section 17-A of the said Act, the Government has delegated the powers and functions vested in it under Rule 43 of the Rules to an Officer.

5. Rule 43 appears in Chapter V of the said Rules and dealing with the special provisions for Import or Export of Explosives General, reads as under:

"43.Import or export by land. - no licence for import or export of explosives by land shall be granted without the previous sanction of the Central Government in each case, wherein the Central Government may impose conditions and restrictions in consultation with the Chief Controller."

6. In nutshell, the submission of the petitioner is that Section 17-A of the said Act cannot be utilised to delegate powers conferred under Sections 5,6,6A, 14 and 17 and it has been so done.

7. We put a query to the learned counsel for the petitioner as to how he contends so. It is not a case of delegation of the Rule making power as envisaged under Section 5 nor is the power delegated by the Central Government for prohibiting the manufacture, possession or importation of Specially Dangerous explosives under Section 6 (notifications issued for the said authorities were required) and for that matter, Section 6A, which is prohibition of manufacture, possession, sale or transport of the Explosives by young persons and certain other persons. Section 14 is dealing with the savings and power to exempt, while Section 17 is extension of definition of "deemed explosives" to other explosive substances.



8. Delegated power within the context of Rule 43, which is for issuance of license for import or export, has to be exercised as per the notification and policies of the Central Government. This is a limited power and it has been misconstrued by the petitioner, as if, it amounts to delegation of power in respect of sections, where it is prohibited. It is only prescribing an authority for issuing of license.

9. We are, thus, of the view that there is no ground made out to assail the impugned order. Therefore, writ petition is dismissed. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To

1. The Cabinet Secretary,
Union of India,
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Union Secretariat, New Delhi.
2. The Secretary,
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Department Industrial Policy and Promotion,
Union Secretariat, New Delhi.
3. The Joint Secretary
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St. George Fort, Chennai.



7. The Joint Chief Controller of Explosives
South Circle No.140
Rukmini Laxmipati Road,
Egmore, Chennai.
Tamil Nadu.

+1 cc to Mr.S.M.Anantha Murugan, Party-in-Person in SR 58186
+1 cc to Mr.R.Murugappan, Advocate in SR No.58047
+1 cc to Spl. Government Pleader in SR 58552

RR/anr/db/20.10.2016/5p/11c

W.P. (MD) No.14217 of 2014
Dated: 03.10.2016