

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2017

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The Honourable MR. JUSTICE M.DURAIWAMY

W.P.No.22254 of 2017
and W.M.P.Nos.23645 & 23646 of 2017

V.Alagarsamy

[Petitioner]

Vs

1. The Chief Controller of Explosives
Petroleum & Explosives Safety Organization,
A-Block, 5th Floor, CGO Complex,
Seminary Hills, Nagpur 440 006.
 2. The Joint Chief Controller of Explosives,
No.142, Ruckmani Lakshmipati Salai,
Egmore, Chennai 600 008.
 3. The Controller of Explosives,
Vellore.
 4. The District Revenue Officer,
Krishnagiri
- [Respondents]

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records relating to the proceedings of the 4th respondent in R.O.C.No.C3/24781/2016 dated 31.03.2017 and the consequential order of the 3rd respondent in No.E/SC/TN/24/490 (E31510) dated 4.7.2017 and quash the same.

For Petitioner

: Mr.K.M.Vijayan, SC
for M/s K.M.Vijayan Associates

For Respondents

: Mr.T.V.Krishnamachari,
Sr.Central Govt. Panel Counsel(R1)
Mr.R.Rajeswaran, SGP (R2-4)

ORDER

Mr.T.V.Krishnamachari, learned Senior Central Government Panel Counsel takes notice for the 1st respondent and Mr.R.Rajeswaran, learned Special Government Pleader, takes notice for the respondents 2 to 4 and by consent, the main writ petition itself is taken up for final disposal at the admission stage itself.

2. The petitioner has filed the above writ petition to issue a writ of certiorari to call for the records relating to the proceedings of the 4th respondent dated 31.03.2017 and the consequential order of the 3rd respondent dated 4.7.2017 and to quash the same.

3.1 It is the case of the petitioner that he is a permanent license holder for display and sale of explosives of the category fireworks and Chinese crackers to quantity of 300 and 1200 Kgs respectively. It is the further case of the petitioner that he is having the license for several years and continuously renewed upto date and the last renewal was done by the 3rd respondent on 06.02.2014 by renewing the license upto 31.03.2019.

3.2 According to the petitioner, pursuant to the order passed by this Court in W.P.No.20232 of 2015, the 4th respondent by proceedings dated 24.10.2016 cancelled all the licenses within his jurisdiction holding that the order of cancellation is valid till the final decision is taken. Thereafter, all the license holders approached the 4th respondent to inform and clarify that

the 4th respondent is not the competent authority, but only an authority to issue No Objection Certificate, that too, for new licensees, and the authority to suspend or cancel the license vests only with the 3rd respondent, as the license issuing authority.

3.3 Thereafter, according to the petitioner, the 4th respondent, immediately issued a notice on 28.02.2017, treating his earlier order dated 24.10.2016 as void and directed all the licensees to “shift” all the shops to a “safer distance, failing which the NOC granted would be cancelled leading to cancellation of notice by respondents 1 to 3. Thereafter, the 4th respondent, without providing an opportunity of personal hearing to the petitioner, passed the impugned order dated 31.03.2017, cancelling the NOC issued to them. Consequent to the said order passed, the 3rd respondent, suspended the license by his proceedings dated 04.07.2017,

Challenging the above said two orders, the petitioner, has filed the above writ petition.

4. Mr.K.M.Vijayan, learned Senior Counsel appearing for the petitioner submitted that as per proviso to Rule 115 of the Explosives Rules, 2008, a licensee should be given a reasonable opportunity of being heard and that the 4th respondent has not given any opportunity of personal hearing to the petitioner and hence, the impugned orders are liable to be set aside.

5. Mr.R.Rajeswaran, learned Special Government Pleader, appearing for the respondents 2 to 4 submitted that the 4th respondent had issued the notice dated 28.02.2017, however, no opportunity of personal hearing was given to the petitioner.

6. Mr.T.V.Krishnamachari, learned Senior Central Government Panel Counsel, appearing for the 1st respondent submitted that an opportunity can be given to the petitioner under proviso to Rule 115 of the Explosives Rules, 2008.

7. Since the proviso to Rule 115 of the Explosives Rules, 2008 has not been followed by giving an opportunity of personal hearing to the petitioner, which is violative of principles of natural justice, I am of the view that the impugned orders passed by the respondents 4 and 3 should be set aside and the matter should be remitted back to the 4th respondent for fresh consideration.

8. Accordingly, the impugned orders dated 31.03.2017 and 04.07.2017 passed by the 4th respondent and the 3rd respondent respectively are set aside and the matter is remanded to the 4th respondent for fresh consideration.

9. At this juncture, the learned Senior Counsel for the petitioner submitted that the petitioner would appear before the 4th respondent on 28.08.2017.

10. Accordingly, the petitioner is directed to appear before the 4th respondent on 28.08.2017 and on such appearance, the 4th respondent is directed to decide the matter afresh, after giving an opportunity of personal hearing to the petitioner, as contemplated under Rule 115 of the Explosives Rules, 2008, within a period of one week from 28.08.2017. It is open to the 3rd respondent to pass appropriate orders after passing of the order by the 4th respondent.

With these observations, the writ petition is allowed. No costs. Connected miscellaneous petitions are closed.

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23.08.2017

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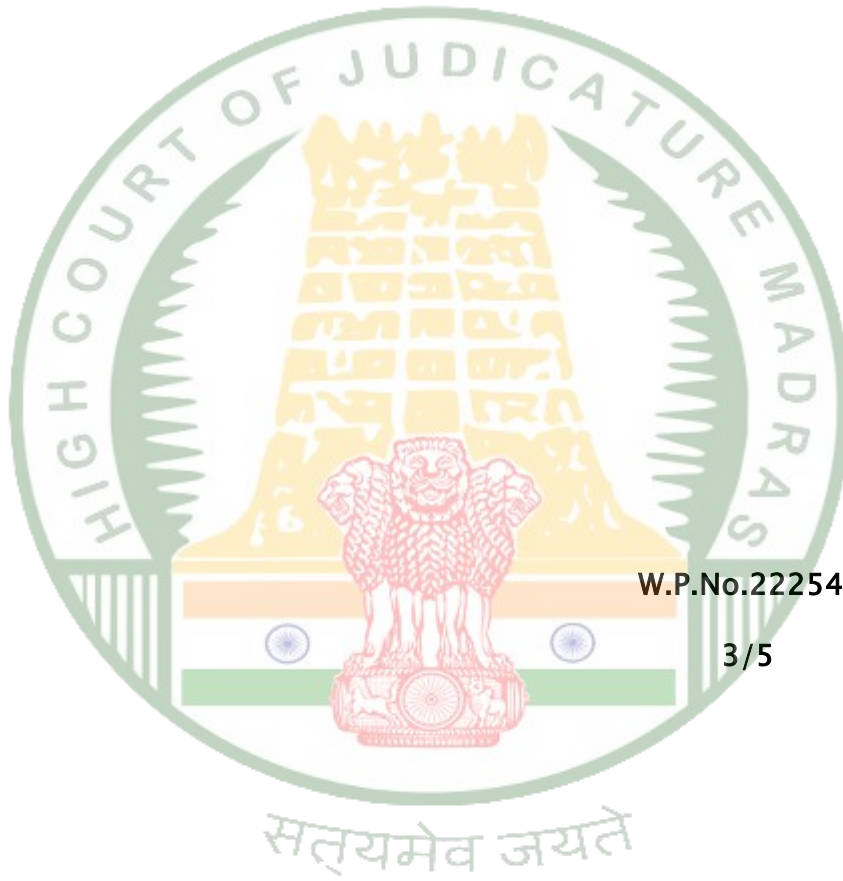
Note :Issue on 24.08.2017

To

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M. DURAISWAMY,J.

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