



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.09.2017

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH

AND

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

W.A. (MD) No.247 of 2017

M/s Vetrivel Explosives Private Ltd.
Rep. by its Managing Director,
135-A, Kennedy Nagar,
Salem.

... Appellant

-vs-

1.The Chief Controller of Explosives,
'A Block, CGO Complex, 5th Floor,
Seminary Hills, Nagpur,
Maharashtra.

2.The District Revenue Office-cum-
Additional District Magistrate,
Tiruchirapalli District,
Tiruchirapalli.

3.The District Collector,
Tiruchirapalli District,
Tiruchirappalli.

4.S.Chandramohan

5.M.Kalaichelvan

6.S.Kannan

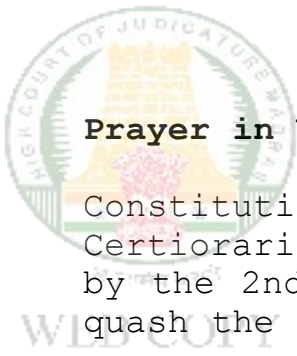
7.K.Sivakumar

8.K.Periyasamy

... Respondents

(R8 is impleaded, Vide Court Order dated 04.07.2017,
made in C.M.P(MD)3738 of 2017 in
W.A(MD)247 of 2017)

Prayer: This Writ Appeal is filed under Clause 15 of Letter
Patent, to set aside the order dated 27.02.2016 in W.P(MD)
No.25046 of 2016 and allow the Writ Appeal as prayed for.



Prayer in WP(MD) . 25046/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorari calling for records relating to the impugned order made by the 2nd respondent in RC.No.D2/23317/2016 dated 17.12.2016 and quash the same as illegal.

For Appellant : Mr.A.R.Sundaresan
for Mrs.A.L.Ganthimathi

For R1 : Mr.R.Murugappan

For R2 & R3 : Mr.M.Murugan
Government Advocate

For R4 : No Appearance

For R5 to R7 : Mr.T.Arul
for M.Saravanan

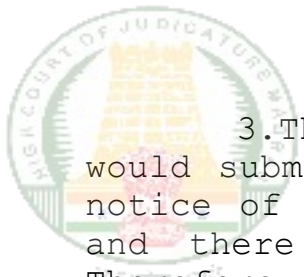
For R8 : Mr.Devaraj

O R D E R

(Order of the Court was made by **M.M.SUNDRESH, J**)

The appellant herein is the licensee for the manufacture of Explosive Substance. Initially, No Objection Certificate was issued by the second respondent, followed by the licence issued by the first respondent. There was a unfortunate accident resulting in the loss of 19 lives within the precinct of the appellant. A case was also registered against the appellant. The second respondent issued show cause notice seeking to exercise his power under Rule 115 of the Explosive Rules, 2008. Though the show cause notice is said to have been despatched, there has been no indication of the same having been received by the appellant. Having found that the appellant has not responded, the impugned order was passed, cancelling the No Objection Certificate in public interest by taking into consideration of public health and public safety.

2.The said order was put into challenge before the learned Single Judge. The learned Single Judge though noted that no notice has been served to the appellant proceeded to dismiss the writ Petition, on the ground of empty formality being involved. Challenging the same the appeal is before us.



3.The learned senior counsel appearing for the appellant would submit that even as per Rule 115 of Explosive Rules, 2008, notice of hearing is mandated. The appellant has not been heard and there is no material to hold that it has been served. Therefore, the said order is *ab initio* void. After the impugned order was passed by the second respondent, the first respondent has cancelled the licence issued. Though, Rule 118 of Explosive Rules, 2008, provides for dispensing with a notice of hearing for the reasons to be stated, a notice was issued and thereafter an order of cancellation was passed. Therefore, it is submitted that though the appellant was not heard, the fact remains that a notice was issued under Rule 118 of Explosive Rules, 2008, by the licensing authority. Therefore, it cannot be stated that the case in hand involves dispensing with the notice as against the mandatory prescription under Rule 115 of Explosive Rules, 2008. It is also not the case of the second respondent that no notice is required. In such view of the matter the order impugned as confirmed by the learned Single Judge cannot be sustained.

4.The learned counsel appearing for the respondents 5 to 7 would vehemently contend that there are suppression of the material facts involved. The No Objection Certificate pertains to only two survey numbers. The fatal accident has happened in a survey number, which was not covered by the No Objection Certificate. The report of the Police Control Board indicates that TDS level contain in the water source nearer to the appellant's factory is beyond human consumption.

5.The Division Bench of this Court has already held that the appellant is an encroacher. The area in question is over exploited one. Most of the Government Wells and bore Wells and pipe water connections became dry. There is a violation of factory rules. The suppression would also involve factors even prior to the issuance of No Objection Certificate. Considering the private interest of the appellant as against the overwhelming public interest, this Court will have to be lean in favour of the later. It is not as if in all cases, the notice is warranted. The principles of natural justice cannot be put in straight jacket formality. It has to be applied to the facts and circumstances of the each cases. In support of the submission, the learned counsel relied upon the decision reported ***in (2015) 8 SCC 519 in the case of Dharampal Satyapal Limited Vs. Deputy Commissioner of Central excise, Gauhati and others.***

6.The learned counsel appearing for the first respondent would submit that the licence has been given based on the No Objection Certificate issued. However, he is not in a position to state as to whether the report as sought for by the second respondent in and by the letter dated 17.12.2016, by way of clarification has been furnished or not. This report has been



sought for with respect to a controversy warranting the area covered by the No Objection Certificate.

7.The learned senior counsel appearing for the appellant would submit that all the requirements of law have been complied with and there is review application filed before the Division Bench in which status quo has been granted.

8.At this juncture, the learned counsel appearing for the respondents would submit that the safety requirements as mandated under Safe distance criteria of 300 meters has not been complied with. The area consuming human habitations are found within the vicinity.

9.The principles of natural justice can be divided into two. One is with respect to the procedural violations, while dealing with this aspect a person, who is aggrieved for non compliance, has to show prejudice. The second is with respect to the decision made without hearing, involving civil consequences. In such contingency it is axiomatic that such a part will have to put on notice. Such right being a human right inheres in an individual, who is affected by an order passed. Admittedly, the order impugned has got civil consequences. There is no finding as to whether the appellant has been heard. In such view of the matter we are of the view that the appellant will have to be given an opportunity to put forth his case. However, we are not inclined to set aside the order impugned. This is for the reason that the appellant is not running a factory as of now. Even before the order passed there was an order of suspension. Secondly, the licence has been cancelled. There are many issues involved including a over whelming public interest.

10.Therefore, considering the above we treat the impugned order as a show cause notice. In such view of the matter we are inclined to set aside the order of the learned Single Judge, as we find that want of notice while passing the impugned order can never be termed as empty formality. We find that in the impugned order, there was no discussion perhaps for the reason that the appellant has not put forth his case. Now many issues has come for consideration.

11.Therefore, considering the above, the following directions are issued:

(1) the impugned order is treated as show cause notice for which the appellant is at liberty to give a suitable explanation within a period of four weeks from the date of receipt of a copy of this order;

<https://hcservices.ecourts.gov.in/hcse/v2cs/> the private respondents before us are also at liberty to give their submission within the afore said period;



(3) it is open to the second respondent to issue an impugned show cause notice touching upon the suppression of fact at the time of issuing the original No Objection Certificate and the question with respect to safety distance and the effect on the water level in the area;

(4) this direction issued by us on construction of Rule 113 of Explosive Rules, 2008, where the power of the second respondent is rather wide in taking into consideration of public interest being paramount;

(5) a positive finding has to be rendered by the second respondent with respect to the Survey numbers governed in the No Objection Certificate;

(6) if the report as sought for by the second respondent in the letter dated 17.12.2016, is not furnished already by the first respondent, the same has to be furnished within a period of two weeks from the date of receipt of a copy of this order;

(7) The second respondent has to pass a reasoned order touching upon all the issues including those raised in the written representation by the private respondents, in which case the copies of the same has to be furnished to the appellant;

(8) the entire exercise will have to be completed within a period of eight weeks from the date of receipt of a copy of this order.

(9) till such time there is no question of considering the revocation of cancellation of licence by the first respondent, who shall await the order to be passed by the second respondent.

(10) After passing the order in the manner as indicated above, the second respondent shall communicate the same to all the parties concerned.

12. With the above direction, this Appeal stands disposed of. No costs.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar



To:

1.The Chief Controller of Explosives,
A Block, CGO Complex, 5th Floor,
Seminary Hills, Nagpur,
Maharashtra.

2.The District Revenue Office-cum-
Additional District Magistrate,
Tiruchirapalli District,
Tiruchirapalli.

3.The District Collector,
Tiruchirapalli District,
Tiruchirappalli.

+2cc to M/S.AL.GANTHI MATHI, Advocate SR.No.78690
+1cc to M/S.R.SUBRAMANIAN, Advocate SR.No.78697
+1cc to M/S.R.MURUGAPPAN, Advocate SR.No.78722
+1cc to M/S.R.DEVARAJ, Advocate SR.No.78712
+1cc to Special Government Pleader, SR.No. 78805

TA/rmi

MAS/KK/SAR3:21.09.2017:6P-10C

W.A. (MD) No.247 of 2017

13.09.2017