



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.09.2017

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CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.P.(MD)No.17543 of 2017

and

W.M.P.(MD)No.14071 of 2017

Matha Explosives,
Represented by its Proprietor,
Mr.S.Mariyanathan,
No.57/1, Maharajapuram 3rd Street,
Thirukokarnam, Pudukkottai,
Pudukkottai District-622001.

... Petitioner

-Vs-

1. The Joint Chief Controller of Explosives,
South Circle, A & D Wing, Block 1-8,
II Floor, ShastriBhavan,
26, Haddous Road, Nungambakkam,
Chennai - 600 006.

2. The District Revenue Officer and
Additional District Magistrate,
Office of the Collectorate, Pudukkottai,
Pudukkottai District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for records pertaining to the impugned proceedings of the second respondent vide Na.Ka.No.11699/2016/C5 dated 01.09.2017 and quash the same as illegal and passed without following the due procedure contemplated under rule 103 (3) (a) of the Explosives Rules, 2008 and consequently directing the respondents to process the petitioner's application for No Objection Certificate by following the procedure contemplated under the Explosives Rules, 2008.

For Petitioner

: Mr.P.Vijay Anand

For R-1

: Mr.P.Paulpandi

For R-2

: Mr.G.Muthukannan

Government Advocate

**ORDER**

This writ petition is filed challenging the order of the second respondent, dated 01.09.2017 and for a direction to process the application of the petitioner seeking '**No Objection Certificate**' for shifting the place of business.

2. Heard Mr.P.Vijay Anand, learned counsel for the petitioner, Mr.Paulpandi, learned counsel for the first respondent and Mr.G.Muthukannan, learned Government Advocate for the second respondent and perused the materials available on record.

3. According to the petitioner, he is an existing holder of explosive licence and he filed an application on 22.12.2014 seeking 'No Objection Certificate' for shifting his place of business, but the respondents without following the rules, rejected the application.

4. The learned counsel for the petitioner would submit that Rule 103(3)(a) of Explosive Rules mandates seven clear days notice, but the respondents issued notice of hearing, dated 28.08.2017 fixing the hearing date on 03.08.2017. Since the respondents have not followed the rules, the impugned order is liable to be set side.

5. The learned Government Advocate would submit that the relevant Rule would not apply to the case of the petitioner and further a criminal case was registered against the petitioner.

6. Rule 103 of the Explosive Rules, 2008 would run thus:-

"103.Procedure to be observed for issue of no objection certificate and for grant of licence.-

(1) The applicant desiring to obtain a licence from the Chief Controller or Controller, shall apply to the District Magistrate or the Director-General of Mines Safety with copies of the site plan showing the location of the premises proposed to be licensed for issue of a certificate to the effect that there is no objection to the applicant receiving licence for the site proposed.

(2) The District Magistrate shall be the authority to issue the certificate referred to in sub-rule (1) if the area of the proposed site does not come under the Indian Mines Act, 1952



(35 of 1952) and the Director-General of Mines Safety shall be such authority if the area of the proposed site is for ANFO, Liquid Oxygen Explosives or SME and comes under the Indian Mines Act, 1952.

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(3) The District Magistrate on receipt of application referred in sub-rule(1), shall make verification of the antecedents of the applicant, lawful possession of the site, genuineness of the purpose, interest of public and any other verifications or enquiries as may be specifically required by the licensing authority to be carried out, if any, and on any other matter as deemed necessary.

(a) For verification of the interest of public, the District Magistrate shall forthwith cause a notice to be published calling upon the public to submit objections, if any, with reasons thereof, within a period of one month from the date of publication of the notice and specifying the date, time and place for consideration of objections by him. Where the site of the proposed premises lies within 1.5 kilometers of the limits of the jurisdiction of any town planning municipal authority or port or air port or satellite or space craft launching station or similar establishments of national importance, the District Magistrate shall cause the notice to be served to such authority or establishment. The day of hearing for consideration of objections shall be fixed as early as possible, after the expiration of the period of one month from the date of publication of notice. On receipt of objection, the District Magistrate shall call the person or persons raising objection and also the applicant, giving not less than seven clear days before the day fixed for hearing for consideration of the objection. On the day fixed for the hearing or any day to which such hearing may be adjourned from time to time, the District Magistrate shall hear any objection relating to the purpose of no objection certificate and shall make such enquiry, as he may deem necessary to assess justification of such objection.

(b) If the quantity of explosives does not exceed one hundred kilograms or in case of ANFO or Liquid Oxygen Explosives or SME or transport of explosives in a road van, the notice for



public for objection as stated in clause (a) shall not be necessary.

(4) The Director-General of Mines Safety, on receipt of application referred to in sub-rule (1), shall make verification of lawful possession of the site, genuineness of the purpose, any other verifications or enquiries as may be specifically required by the licensing authority to be carried out, if any, and on any other matter as deemed necessary.

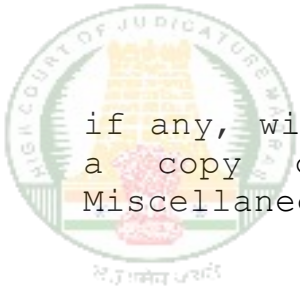
(5) The authority referred to in sub-rule (3) or sub-rule (4) shall complete the enquiry within a period of three months and such authority shall after being satisfied, grant no objection certificate along with site plan duly signed and sealed by such authority.

(6) If the authority referred to in sub-rule (3) or sub-rule (4) objects to the grant of the no objection certificate on any of the grounds relating to the purpose of no objection certificate, no licence shall be granted by the licensing authority except with the sanction of the Central Government.

(7) The authority referred to in sub-rule (3) or sub-rule (4) shall grant the no objection certificate in the format specified in Part 2 of Schedule V or convey his refusal for granting no objection certificate with reasons thereof in writing to the applicant as expeditiously as possible but not later than six months from the date of receipt of application from the applicant."

7. It is not in dispute that the second respondent issued notice to the petitioner only on 28.08.2017, which was served on 31.08.2017 and the application was taken up for hearing on 01.09.2017. The second respondent, without following the rules and without affording opportunity to the petitioner, rejected the application on the ground that the petitioner did not appear during the hearing. In my considered view, the order of the 2nd respondent, dated 01.09.2017 cannot be sustained.

8. In that view, the order of the 2nd respondent, dated 01.09.2017 is set aside and the writ petition is **allowed**. The case is remitted to the second respondent to pass orders afresh, on merits and in accordance with law, after providing opportunity of hearing to the petitioner as well as to the necessary parties



if any, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1. The Joint Chief Controller of Explosives,
South Circle, A & D Wing, Block 1-8,
II Floor, Shastri Bhavan,
26, Haddous Road, Nungambakkam,
Chennai - 600 006.

2. The District Revenue Officer and
Additional District Magistrate,
Office of the Collectorate, Pudukkottai,
Pudukkottai District.

+ 1 CC TO MR.P.Vijay Anand, ADVOCATE IN SR No.81191

+ 1 CC TO MR.P.Paulpandi, ADVOCATE IN SR No.80748

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No.81085

sm/er

MK/KP/SAR-1/05.10.2017/5P/6C

W.P. (MD) No.17543 of 2017
22.09.2017