



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 27.02.2017

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P(MD)No.25046 of 2016

and

W.M.P(MD)No.18128 of 2016

Vetrivel Explosives Private Limited,
represented by its Managing Director
No.135-F, Kennedy Nagar,
Salem.

..Petitioner

Vs

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

2.The District Revenue Officer-cum-
Additional District Magistrate,
Tiruchirappalli District,
Tiruchirappalli.

3.The District Collector,
Tiruchirappalli District,
Tiruchirappalli.

4.S.Chandramohan
5.M.Kalaichelvan
6.S.Kanna
7.K.Sivakumar

(R4 to R7 are impleaded as per order of this Court
made in W.M.P(MD)No.71 of 2017, dated 10.1.2017)

..Respondents

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

For Petitioner

<https://hcservices.ecourts.gov.in/hcservices/>

:Mr.M.Ajmal Khan

Senior Counsel

for M/s.Ajmal Associates



For Respondent-1:M/s.R.Murugappan

For Respondents :Mr.C.Selvaraj
2 and 3 Special Govt.Pleader

For Respondents :Mr.M.Saravanan
4 to 7

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ORDER

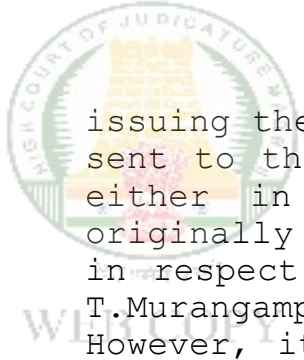
This Writ Petition is filed challenging the order of the second respondent, dated 17.12.2016 cancelling the No Objection Certificate issued under the Explosives Act, 1884.

2.The case of the Petitioner, in short, is as follows:

The Petitioner/Company is a private limited company engaged in the business of manufacture, sale and export of explosives for industrial purposes permitted under the Explosives Act, 1884. The Petitioner/company established a factory in Murangampatti Village, Thuraiyur Taluk, Tiruchirappalli District. The said factory premises was established after obtaining all statutory permissions and clearances as required under the Explosives Act, 1884 and the rules made thereunder. The second respondent accorded No Objection Certificate as required under Rule 103 of the Explosives Rules, 2008 through his proceedings, dated 3.7.1998. Consequent upon issuance of such No Objection Certificate, the first respondent also accorded licence to the Petitioner under the Explosives Act, 1884 and the rules made thereunder. The licence has been renewed from time to time. On 1.12.2016, at about 7.30 a.m., an accident had occurred in the factory premises for the reasons not attributable to the Petitioner/company. In view of such accident, the licence issued to the Petitioner had been temporarily suspended. Thereafter, the impugned order, dated 17.12.2016 was served on the Petitioner on 23.12.2016 cancelling the No Objection Certificate granted already. Before passing the impugned order, no notice was given and no reasonable opportunity of hearing was provided to the Petitioner. Thus the impugned order violates the principles of natural justice.

3.The second respondent filed a counter affidavit, wherein, it is stated as follows:

On 01.12.2016 at around 7.30 a.m., an explosive fire accident occurred at the petitioner premises. Due to the severity of the explosion, entire building (PETN Plant) has collapsed, 12 persons were severely injured and 19 employees working at the time of accident were found missing and they are considered to be dead. Under Rule 115 of the Explosives Rules, 2008, the authority is competent to cancel the No Objection Certificate, if such authority is satisfied that the cancellation of No Objection Certificate is absolutely necessary for maintaining public peace and safety. Before



issuing the impugned order, a show-cause notice, dated 2.12.2016 was sent to the Petitioner. No explanation was given by the Petitioner either in person or in writing. No Objection Certificate was originally accorded by the second respondent to the Petitioner only in respect of the factory in S.No.528 and Go-down in S.No.523 of T.Murangampatti Village, Thuraiyur Taluk, Tiruchirappalli District. However, it was found that the Petitioner has obtained licence for the manufacture, possession and sale of explosives in S.No.525 to 542, 563, 568 to 574 at T.Murangampatti Village. Therefore the Petitioner has obtained licence without the No Objection Certificate for S.Nos.525 to 542, 563, 568 to 574. The first respondent has been requested to clarify this issue through letter, dated 17.12.2016 by marking a copy of the same to the Petitioner. The report is still awaited from the first respondent.

4.Mr.M.Ajmal Khan, learned Senior Counsel appearing for the Petitioner has submitted as follows:

The impugned order violates the principles of natural justice as the Petitioner was not put on notice or given an opportunity of hearing, before passing the same. Rule 115 of the Explosives Rule, 2008 specifically provides for a reasonable opportunity of being heard before passing the order of cancellation. The Petitioner is not at fault and therefore, had there been a reasonable opportunity given, the Petitioner would have explained the second respondent and satisfied him to sustain the No Objection Certificate. Violation of Principles of natural justice goes to the root of the matter and therefore, the impugned order should be set aside and the matter should be remitted back to the second respondent for considering it afresh after hearing the Petitioner. The learned Senior Counsel further submitted that though it is contended by the official respondents that a show-cause notice was issued to the Petitioner, no such notice was ever received by the Petitioner and there is no proof for such service.

5.Per contra, the learned Special Government Pleader appearing for the official respondents submitted that it is not correct to say that the Petitioner was not put on notice and on the other hand, a notice, dated 2.12.2016 was issued to the Petitioner, for which, they have not chosen to give any explanation. The learned Special Government Pleader, further contended that in view of the gravity of the incident, namely the explosive fire accident that caused the loss of life of 19 persons and severe injury to 12 persons, the authority has rightly cancelled the No Objection Certificate, with which, this Court need not interfere.

6.The learned counsel appearing for the respondents 4 to 7 supported the case of the official respondents and submitted that because of the explosive fire accident, which was purely due to the negligence of the Petitioner, the valuable 19 lives have gone and 18 workers got severely injured and therefore, cancellation of No Objection Certificate, which is impugned in this Writ Petition, need not be interfered with. The learned counsel also submitted that the



Petitioner has obtained licence in respect of several other survey numbers for which they did not obtain No Objection Certificate from the second respondent.

7. Heard the submissions made by both sides.

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8. The Petitioner/company is involved in the business of manufacture, sale and export of explosives for industrial purposes. Chapter VIII of the Explosives Rule, 2008 deals with grant or refusal of approval, No Objection Certificate, licence, certificates, amendment, transfer and renewal. Under the said Chapter, Rule 101 deals with prior approval before construction. Rule 102 contemplates of obtaining No Objection Certificate before construction. Rule 103 contemplates the procedure to be observed for issuance of No Objection Certificate for grant of licence. Rule 115 deals with cancellation of No Objection Certificate issued under Rule 103.

9. In this case, we are concerned, presently, only with Rule 115 of the said Rules, which reads as follows:

''115. Cancellation of no objection certificate:--(1) No Objection Certificate granted under rule 103, may be cancelled by the authority issuing the same or authority superior to it, if such authority is satisfied, that --

(a) the licensee has ceased to have any right for the lawful possession over the licensed premises;

(b) the licensee is convicted and sentenced for any criminal offence or ordered to execute under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974), a bond for keeping peace for good behaviour;

(c) the cancellation of no objection certificate is necessary for public peace and safety;

Provided that before cancellation of the no objection certificate, the licensee shall be given a reasonable opportunity of being heard.

(2) The authority issuing the no objection certificate or the District Magistrate or the State Government cancelling no objection certificate shall record, in writing, the reasons for such cancellation and shall immediately furnish to the licensee and the licensing authority concerned, copy of the order cancelling the no objection certificate and the reason for such cancellation.

(3) In case an appeal is made against the cancellation of no objection certificate, the appellate authority may consult, if so desired, the Chief Controller.''



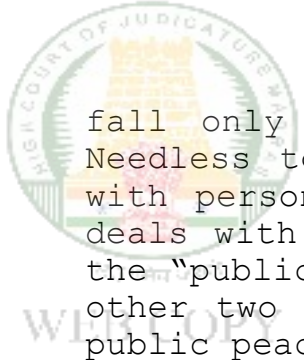
10.A perusal of the above said rule would show that the No Objection Certificate issued under Rule 103 may be cancelled by the authority, if such authority is satisfied under three eventualities viz., a) when the licensee has ceased to have any lawful possession of the site; b) when the licensee is convicted and sentenced for any criminal offence or ordered to execute under Chapter VIII of the Code of Criminal Procedure, 1973 and for getting a bond for keeping good behavior and c) when the cancellation of No Objection Certificate is absolutely necessary for maintaining public peace and safety. Proviso to the said rule, no doubt, contemplates that, the licensee shall be given a reasonable opportunity of being heard before such cancellation. Sub-Rule 2 of Rule 115 contemplates that the authority cancelling the No Objection Certificate shall record in writing, the reasons for such cancellation and immediately furnish the copy of the order to the licensee. In this case, the impugned order recorded the reasons for cancellation i.e., the explosive fire accident and the loss of life of lives of 19 persons and severe injuries caused to 12 persons.

11.The Writ Petitioner seeks to challenge the impugned order mainly by contending that the same violates the principles of natural justice. According to the Petitioner, before passing the impugned order, they were not put on notice nor any opportunity of hearing was given to them.

12.On the other hand, it is contended by the learned Special Government Pleader appearing for the official respondents that a show-cause notice dated 2.12.2016 was, in fact, issued to the Petitioner and that they have not chosen to give any explanation for the same. The learned Special Government Pleader has produced the file before this Court in support of the above said contention. Perusal of the file would show that the notice, dated 2.12.2.106 was sent to the petitioner by making an endorsement therein stating that it was sent on 2.12.2016 itself.

13.The learned Senior Counsel appearing for the Petitioner vehemently contended that no such notice was ever received by the Petitioner and there is no proof of any acknowledgement. Therefore the learned Senior Counsel contended that it has to be construed that there was no notice served on the Petitioner before passing the order of cancellation.

14. From the above rival contention of the parties, it is evident that there is a disputed question of fact regarding the issuance of the show cause notice. When the file produced by the learned Special Government Pleader indicates issuance of notice, it is disputed by the petitioner. This Court would have, under normal circumstances, called upon the second respondent to establish such service of notice, if the facts and circumstances of the present case fall within any of the first two categories referred to under Rule 115, warranting cancellation. Admittedly, the present case



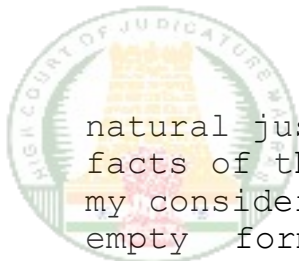
fall only under 3rd category, namely, "Public Peace and Safety". Needless to state that while the first and second categories deal with personal disqualification of the licensee, the third category deals with and is concerned of the public peace and safety. Thus, the "public safety" stands apart distinctly and differently from the other two categories. Once it is seen that the matter relates to public peace and safety, the immediate action taken by the authority should not be interfered on some technical objections.

15. Let me presume that no notice was served on the Petitioner and the order came to be passed without affording him an opportunity of hearing. Then the question that would next arise is as to whether the impugned order is liable to be set aside on the ground of violation of principles of natural justice, as contended by the Petitioner. Answer to the above said question would be in negative for the following reasons:

16. The very explosive fire accident which has taken place within the premises of the petitioner is not disputed. Loss of life of 19 persons and injuring 12 or more persons severely, resulting out of such accident, are also not disputed. I do not understand as to what remains for the authority to wait and take a decision after hearing the petitioner. Certainly there could not be any doubt in the mind of the authority regarding the factum of the accident and the loss of life of 19 persons and injury caused to others. Undoubtedly, it is evident on the face of the undisputed incident that the place where the accident took place is no more a place for maintaining Public Peace and Safety. There cannot be any other better reason for the authority to withdraw the "No Objection" given earlier, than the present one. Equally the authority cannot have any other option except to cancel. Under such extraordinary circumstances, if the authority decides to take action immediately without waiting for the petitioner to answer, such imminent and inevitable exercise of power, though not in conformity with natural justice principle, cannot be found fault with warranting interference by this Court.

17. It is well settled that the principles of natural justice is not a straight-jacket formula. It may, at the best, be a part of the process of rendering substantial justice, but that alone is not the substantial justice. Going by the facts and circumstances of a given case, if the Court finds that the action taken by the authorities, even by overlooking the principles of natural justice, exhibits the existence of substantial justice in its soul, it is not necessary to interfere with such action.

18. True. Rule 115 of the Explosives Rule 2008 contemplates a reasonable opportunity of hearing before cancellation of No Objection Certificate. As already observed supra, when the authority is satisfied that the cancellation of No Objection Certificate is an absolute necessity for maintaining public peace and safety, this Court has to see as to whether following of the principles of



natural justice is still required in this case, despite the admitted facts of the said explosive fire accident and the loss of lives. In my considered view directing such compliance is going to be only an empty formality, as the admitted facts, very much evidently available on the face of the incident, would only lead to the one and only possible conclusion for the cancellation of No Objection Certificate. Hence, the absence of notice before such cancellation even assuming to be so, is not fatal to the order impugned in this Writ Petition.

19.It is well settled that when the technicality and substantiate justice is pitted against each other, the later should prevail over the former. In fact, the Apex Court in a decision reported in **(2013)4 SCC 97** (Laxmi Bai vs. Bhagwantbuva), has observed at paragraph No.49 as follows:-

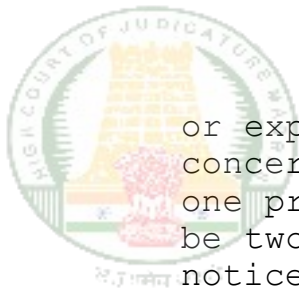
"49.....When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred and the courts may in the larger interests of administration of justice may excuse or overlook a mere irregularity or a trivial breach of law for doing real and substantial justice to the parties and pass orders which will serve the interest of justice best."

(emphasis supplied)

20.Similarly, a Division Bench of this Court (where I am one of the parties) in a case reported in **(2014)8 MLJ 641** (Om Metal Infra Projects Ltd., vs. Union of India), has observed at paragraph 35 as follows:-

"35.Question (vi): Whether the impugned actions have violated the principles of natural justice and whether following of such principles is warranted under the facts and circumstances of the present case?

It is well settled that application of the principles of natural justice is not a straight-jacket formula to be applied in each and every case. Certainly, facts and circumstances of each case should be gone into to decide as to whether such principle needs to be applied or not. The purpose of applying such principles is to put the affected person on notice and to get his views or explanation as to why such proposed action cannot be taken. If the person so affected, on receipt of notice gives explanation and satisfies the authority that the proposed action cannot be taken and/or it is not at all warranted, then the authority who is competent to take action, can take a view or decision based on such explanation. Therefore, it is crystal clear that such explanation or objection to be given by the affected person, must have a bearing on the decision to be taken by the authority concerned. In other words, such objection



or explanation must be in a position to make the authority concerned to take a different view also, other than the one proposed already. To put it in a nutshell, there must be two views possible, one in favour and the other against noticee. Only under such circumstances, the requirement of issuing notice and following the principles of natural justice arises. If no other view is possible or the explanation or objection to be made by such person cannot alter or have any bearing on the decision to be taken, there is no need to issue such notice. In those cases, issuance of notice would be only an empty formality."

21. The reasons for such explosive fire accident and who is at fault, are all factual aspects which are to be gone into by the Criminal Court, as already the criminal prosecution has been launched against the Petitioner under various offences. Therefore, this Court, at this stage, is not inclined to go into those aspects and give any finding on the same. At the same time, this Court cannot ignore the revelation of the moral of the story that the place is not safe for the public peace.

22. Needless to say that neither the Petitioner nor this Court can bring back the lives of 19 innocent persons. There are cases, facts and circumstances, wherein this Court can interfere and certainly insist for strict compliance of principles of natural justice. But this case is not the one which requires such interference.

23. Moreover, it is well settled that the jurisdiction of this Court under Article 226 of the Constitution of India is undoubtedly a discretionary jurisdiction which need not necessarily be exercised, even assuming that the Petitioner has made out a case. Certainly it depends upon the facts and circumstances of each case for the court to decide either warranting such discretionary exercise or not. I find that this is not the case fit for exercising such discretionary power.

24. Thus, the Writ Petition fails and stands dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(T&P)

/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 Officer-cum-
Additional District Magistrate,
Tiruchirappalli District,
Tiruchirappalli.

3.The District Collector,
Tiruchirappalli District,
Tiruchirappalli.

+1cc to Special Government Pleader SR.No.11187
+1cc to Mr.R.Subraman, Advocate SR.No.10907
+1cc to Mr.R.Murugappan, Advocate Sr.No.11134
+1cc to M/s.Ajmal Associates, SR.No.11076

vsn/skn

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W.P (MD) No.25046 of 2016
and
W.M.P (MD) No.18128 of 2016
27.02.2017