

*** THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

+ WRIT PETITION No.15682 OF 2016

%13.09.2017

Between:

Gundepalli Meenacharyulu @ Abbanna

... Petitioner.

AND

The State of Andhra Pradesh, rep. by its Principal Secretary, Home Department, Hyderabad and 3 others.

.... Respondents.

! Counsel for Petitioner : Sri Ravulapati Sreenivasa Rao

^ Counsel for Respondents : Government Pleader for Home

< Gist:

> Head Note:

? Cases referred:

¹ (1978) 1 SCC 405



THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**WRIT PETITION No.15682 OF 2016****ORDER:**

It is a case where the order dated 26.10.2015 of the 3rd respondent-primary authority as confirmed by the 2nd respondent-appellate authority is challenged before this Court. The impugned order has been made in exercise of the powers conferred under the Explosive Act, 1884 (for short, "the Act") read with Rule 118 of the Explosive Rules, 2008 (for short, "the Rules"). As can be seen from the impugned order, the explosive license for manufacturing of fire crackers which was granted to the petitioner was cancelled on 19.10.2015. A fire accident was occurred on 19.10.2015 at about 7.00 a.m. at the outskirts of Jaggammagaripet, H/o. Hussanpuram Village, Samalkot Mandal East Godavari District. As per the impugned order, the accident has occurred on account of the negligence of the petitioner whose license unit for manufacturing of fire crackers is situated in Sy.No.64/4 of Jaggammagaripeta Village and the accident had occurred at about 300 meters faraway from the place where the petitioner was carrying on the business of manufacture of the fire crackers without license. The building at which the accident had occurred is unlicensed premises and the petitioner had failed to take necessary permission for manufacturing of the fire crackers. The case of the petitioner is that while the impugned order has been made on 26.10.2015, the primary authority failed to issue notice and cause enquiry and failed to appreciate that the premises at which the fire accident took place is no way concerned with the petitioner's premises which is admittedly situated in and around 300 meters away. The

petitioner had completely denied any involvement or any connection with the fire accident took place. It is also the contention of the petitioner that the fire accident has occurred in Sy.No.271 of Bheemavaram Village, Samalkota Mandal and which is outside the purview of the Gram Panchayat in which the petitioner's manufacturing unit is situated. The petitioner would also contend that the appellate authority failed to consider the appeal grounds and the fact that the license was admittedly valid till 31.3.2016 and for no fault of his he has been deprived of his livelihood.

Learned counsel for the petitioner would reiterate the contentions raised in the writ petition.

A perusal of the counter affidavit filed by the 2nd respondent discloses that it is nothing but reiteration of the contentions recorded in the impugned order apart from making a reference to the Rules. A further recording in the counter-affidavit is that for the premises situated in Sy.No.271, the petitioner did not comply and obtain any license for manufacture of the fire crackers and a reference is made to the enquiry alleged to have been conducted by the Tahsildar, Samalkota. In those circumstances, the 2nd respondent justifies that the order has been made after following the due process. However, one aspect of the matter is clear that in para No.8 of the counter-affidavit the respondents had categorically stated that under Rule 118(5)(i) of the Rules notwithstanding anything contained in Sub-Rule (1) an opportunity of being heard may not be given to the holder of license before his license is suspended or cancelled.

Learned Government Pleader for Home while reiterating the contentions raised in the counter-affidavit submits that the manufacture of fire crackers without license obnoxious and is likely to cause public loss and damage both to the wealth and property. In those circumstances, the learned Government Pleader would submit that the matter has to be viewed strictly and prays for dismissal of the writ petition.

Having considered the respective submissions and on perusal of the record and the material placed along with the counter-affidavit, there is no dispute that no notice or opportunity was given to the petitioner before passing the impugned order by the primary authority. The 2nd respondent was fair enough in admitting the same in the counter-affidavit itself. However, the contention of the 2nd respondent as raised in the counter-affidavit that on account of Rule 118(5)(i) of the Rules, no notice is required to be issued is an issue which requires to be considered. The Rule 118(5)(i) of the Rules reads as under:

(5) Notwithstanding anything contained in sub-rule (1), an opportunity of being heard may not be given to the holder of the licence before his licence is suspended or cancelled in cases-

(i) where the licence is suspended by a licensing authority as an interim measure for violation of any of the provisions of the Act or these rules or of any conditions contained in such license and in his opinion such violation is likely to cause immanent danger to the public;

Provided that where a licence is so suspended, the licensing authority shall give the holder of the license an opportunity of being heard before the order of suspension is confirmed; or”

A bare reading of the Rule 118(5)(i) of the Rules discloses that firstly the said provision can be invoked only for the purpose of suspension pending enquiry as it is well settled, no notice is

required to be given for suspension pending enquiry unless the same is required under the Statute or Rules. However, in the case on hand, the very proviso to Rule 118(5)(i) of the Rules itself mandates that once a suspension pending enquiry is made, there is a requirement of giving notice by the licensing authority to the holder of the license and an opportunity of being heard is required to be given before confirming the suspension. Admittedly in the present case straightaway the order of cancellation has been made and in those circumstances this Court has no hesitation that Rule 118(5)(i) of the Rules, which is alleged to have been invoked, has no application and as a matter of fact it is not even the case of the primary authority or by the appellate authority in its order. The said contention has been raised before this Court for the first time in the counter-affidavit. Now it is well settled on account of the judgment of the Supreme Court in **Mahinder Singh Gill and another vs. The Chief Election Commissioner, New Delhi and others**¹ that an order made by an authority as to suspension itself on the contents contained therein and further reasons cannot be supplemented or supplanted by way of affidavits. It is significant to note that even for suspension pending enquiry to suspend the license the rules prescribed following the principles of natural justice. In the present case on hand straight license has been cancelled without there being any notice calling for explanation or enquiry. Statutory has provided the issuance of notice and enquiry being conducted and giving an opportunity of hearing for suspension. It cannot be presumed that there is no such requirement when the licensee is sought to be deprived of the right

¹ (1978) 1 SCC 405

to carry on the business. It is well settled that when an administrative order/quasi order/ judicial order, which may result in civil consequences, the requirement of compliance of principles of natural justice have to be read into the provisions even if the same is not provided. In those circumstances, the impugned order cannot be sustained and is liable to be set aside.

There is yet another issue which is required to be considered that if the license of the petitioner is not cancelled through the impugned order, in normal circumstances petitioner would have been entitled to carry on the business up to 31.3.2016 up to which time license granted in favour of the petitioner was in force. Further the petitioner would have an opportunity to seek renewal of the licence. As the license has been cancelled, petitioner could not make the application for renewal as he has challenged both the orders of primary authority as well as the appellate authority before this Court in the writ petition. It is also now admitted fact that the petitioner made a representation on 31.8.2016 seeking for renewal of the license. Now on account of the fact that the cancellation of the license has held to be bad in law, there is no impediment for the licensing authority to consider the application of the petitioner for renewal by considering the fact that the license would be valid till 31.3.2016. In those circumstances, there would be a further direction to the 3rd respondent licensing authority to process the renewal application of the petitioner subject to condition the petitioner satisfying the requirements as required in the rules and subject to the petitioner paying the necessary license fees and complying with the other legal formalities. Such exercise

shall be completed within a period of three weeks from the date of receipt of copy of the order. No order as to costs.

With the above observations, the writ petition is allowed setting aside the order dated 20.04.2016, passed by the 2nd respondent-District Collector in Ref C4/M/1155/2015. No order as to costs.

Consequently, the miscellaneous Applications, if any shall stand closed.

CHALLA KODANDA RAM, J

13th September, 2017

Note:

L.R copy to be marked.

Issue cc in 3 days.

B/o.

Gk



THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.15682 OF 2016

Date:13.09.2017

Gk

