

HONOURABLE SRI JUSTICE A.V. SETHA SAI

WRIT PETITION NO: 41487 OF 2018

ORDER :

This writ petition is filed invoking the inherent jurisdiction of this Court under Article 226 of the Constitution of India, seeking a writ of mandamus to declare the action of the first respondent by issuing show cause notice bearing No. G-3 [42] 586, dated 23/10/2018, restraining the petitioner from manufacturing L.P.G. Cylinders, pending further orders on the show cause notice proposing withdrawal of manufacturing approval of the petitioner-company, as arbitrary, illegal and consequently set aside the same and direct the respondents not to interfere with the activity of the petitioner in manufacturing L.P.G. Cylinders on the basis of the subsisting approvals and licenses possessed by the petitioner-company and to pass such other suitable orders as this Court may deem fit and proper in the circumstances of the case.

2. Heard Sri Vedula Venkataramana, learned Senior Counsel representing Sri Vedula Srinivas, counsel for the petitioner-company and Ms. Anjani Agarwal, Sri K. Lakshman, learned Assistant Solicitor General for the respondents.

3. A show cause notice bearing No. G-3(42) 586, dated 23/10/2018 was issued by the Chief Controller of Explosives, on behalf of the Controller of Explosives, Petroleum and Explosives Safety Organization. By way of impugned show cause notice, the respondents called upon the petitioner-company to show cause as

to why the manufacturing approval granted in favour of the petitioner should not be withdrawn. In the pen-ultimate para of the said show cause notice, pending action pursuant to the said show cause notice, the petitioner has been advised not to manufacture L.P.G. Cylinders by the Controller of Explosives, subject to further orders.

4. In fact, in response to the show cause notice, the petitioner herein submitted a reply dated 10/11/2018 and they received the explanation of the petitioner and now the issue is pending consideration before the respondents.

5. In the present writ petition, the petitioner herein is aggrieved by the show cause notice only to the extent of advising not to manufacture L.P.G. Cylinders till further orders. According to the learned Senior Counsel, Sri Vedula Srinivas, the impugned action to the extent of condition of advising not to manufacture L.P.G. Cylinders till further orders is totally one without jurisdiction and is illegal, arbitrary and violative of Article 14 and 19 (1) (g) of the Constitution of India.

6. It is further submitted by Sri Vedula Venkataramana, learned Senior Counsel that the Gas Cylinder Rules, 2016 do not authorize the respondents to impose such a condition. While saying so, the learned Senior Counsel has brought to the notice of this Court Rule-57 of the Rules, which reads as follows :

Rule-57 : Suspension and cancellation of licence or approval :

(1) Every licence or approval granted under these rules shall be liable to be suspended or cancelled by an order of the licensing authority for any contravention of the provisions of the Act or Rules framed there under or of any condition contained in such licence, or by an order of the Central Government, if at any time the continuance of the licence in the hands of the licensee is deemed objectionable;

(2) Before passing an order suspending or canceling a licence or approval under sub-rule (1),

(a) the holder of the licence or approval shall be given an opportunity of being heard;

(b) the maximum period of suspension under sub-rule (1) shall not exceed three months; and

(c) the suspension of a licence or approval shall not debar the holder of the licence from applying for its renewal in accordance with the provisions of Rule-55.

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

(a) where the licence is suspended by the licensing authority as an interim measure for violation of any of the provisions of the Act or these rules, or of any condition contained in such licence or approval or in his opinion such violation is likely to cause imminent danger to the public.

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

(b) where the licence or approval is suspended or cancelled by the Central Government, if the Government considers that in the public interest or in the interest of the security of the State such opportunity should not be given.

(4) The Chief Controller or Controller or the Central Government suspending or canceling a licence under sub-rule (1), shall communicate the reasons thereof to the applicant except when the licence or approval is suspended under sub-rule (2).

7. No provision of law could be brought to the notice of this Court, which enables the respondents to impose such a condition of directing not to manufacture L.P.G. Cylinders, pending action under Rule-57.

8. This Court is also not inclined to scuttle further action, as such this Court deems it appropriate to dispose of this writ petition with a direction to the respondents and to pass appropriate orders pursuant to the show cause notice dated 23/10/2018 by taking into consideration the reply and additional reply submitted by the petitioner on 10/11/2018 strictly on merits and in accordance with law. However, the penultimate paragraph of the impugned show cause notice, wherein the Controller of Explosives advised not to manufacture L.P.G. Cylinders shall remain suspended, pending passing of final orders pursuant to the show cause notice dated 23/10/2018. It is also made clear that manufacturing shall be in conformity with the mandatory requirements of law.

9. With the above direction, the writ petition is disposed of at the stage of admission. There shall be no order as to costs.

10. As a sequel, miscellaneous petitions if any, pending in this writ petition shall stand closed.

JUSTICE A.V. SETHA SAI.

HONOURABLE SRI JUSTICE A.V. SSHA SAI

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(RESULT : DISPOSED OF)



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