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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 7206/2016 & CM No. 29629/2018**

ANSHIT ARORA

..... Petitioner

Through Mr Vaibhav Sinha, Advocate.

versus

CHIEF CONTROLLER EXPLOSIVE & ORS Respondents

Through Mr Vikas Mahajan, CGSC with

Mr Aakash Varma, Advocate for R1 and R2.

Mr Dhruv Rohatgi, Advocate for R3.

Inspector Narender Singh, Licensing Unit, Delhi
Police.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **02.11.2018**

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 14.10.2015 passed by the Controller of Explosives cancelling the licence issued, as per provisions of Rule 118 (1)(III) of the Explosives Rules, 2008 (hereafter 'the said Rules'). The only reason provided for cancelling the licence is that the licensee, who was the petitioner's father, had expired.
2. The petitioner's grievance is that his application for transfer of the licence under Rule 108 of the said Rules has not been considered.
3. The learned counsel appearing for respondent no.1 states that the said respondent would not have any objection in transferring the licence in

favour of the petitioner if the petitioner complies with all the requirements of Rule 108 of the said Rules, and submits the documents as provided therein. The learned counsel appearing for respondent no.1 has also drawn the attention of this Court to a letter dated 01.10.2015, whereby the petitioner was called upon to furnish the necessary documents for transfer of the licence. It appears that the principal controversy relates to the submission of a no objection certificate (NOC) from the District Magistrate (in case of New Delhi the Joint Commissioner of Police) in terms of Rule 108 (2) (i) of the said Rules.

4. The petitioner claims that by virtue of the proviso to Rule 108 (2) (i) of the said Rules, he is not required to submit a NOC as such an NOC was already provided at the time of issuance of the licence to his father and also at the time of issuance of a temporary licence to the petitioner.

5. At this stage, it would be relevant to refer to Rule 108 of the said Rules which set out below:-

“108. Transfer of licence.—(1) A licence granted under these rules may be transferred by the authority empowered to grant the licence.

(2) An applicant who desires to get the licence transferred in his favour shall submit to the licensing authority—

(a) an application in form appropriate for grant of the licence;

(b) specimen signature of the applicant or his authorised person;

(c) a letter from the existing licensee signed by the authorised person requesting the transfer of licence in favour of the applicant or a succession certificate from a competent court in case of death of a licensee being an individual;

- (d) original licence issued to the existing licensee;
- (e) copies of supporting documents regarding transfer of rights of the premises in favour of the applicant;
- (f) requisite scrutiny fee and transfer fee;
- (g) copies of all approved drawings in the name of the applicant;
- (h) status of the applicant whether individual, proprietary firm, partnership firm, company, association or society or otherwise—documentary evidence along with names, addresses of the proprietor or partners or directors or members as the case may be, and photographs of the occupier, to be submitted; (i) a no objection certificate from the District Magistrate for transfer of the licence in favour of the applicant :

Provided that no objection certificate shall not be necessary if the applicant holds a licence for which a no objection certificate has already been granted.”

6. A plain reading of the proviso indicates that a NOC from the District Magistrate would not be necessary if the applicants hold a licence for which a NOC has already been granted. In the present case, the applicant does not hold a licence for which a NOC has been granted. The NOC, if at all, was granted in respect of the licence held by the petitioner’s father.

7. The learned counsel appearing for the Joint Commissioner of Police (who is a District Magistrate in terms of Section 4(c) of the Explosives Act, 1884) submits that it would be difficult to issue a NOC, as the first floor of the premises where the fire crackers are to be stored is used for residential purpose. He also submits that in cases where such licences had been issued in respect for such premises, a direction has been issued to cancel the same.

8. This Court is of the view that the contentions advanced on behalf of the respondent nos. 1 and 2 are merited. Rule 108 (2) (i) of the said Rules clearly indicates that the petitioner is required to submit a NOC from a District Magistrate. The proviso to Rule 108 (2) (i) of the said Rules would apply in cases where the applicant already holds a licence. Clearly, this is not the case here; the petitioner does not hold a licence for which a NOC has been issued.

9. In view of the above, the present petition is disposed of by permitting the petitioner to approach the concerned authorities for transfer of the licence by providing all necessary documents as specified under Rule 108 of the said Rules. It will also be open for the petitioner to approach the concerned authorities for temporary licence as well.

10. The pending application is, accordingly, disposed of.

VIBHU BAKHRU, J

NOVEMBER 02, 2018

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