

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8276 OF 2019

Royal Fire Works
Through its Proprietor
Sameer Dadasaheb Mulani,
Age : 38 years, Occu : Business,
R/o Indapur, Tq. Washi,
Dist. Osmanabad. ...Petitioner

Versus

1. The State of Maharashtra,
Through Divisional Commissioner,
Aurangabad Division, Aurangabad.
2. The District Magistrate,
Osmanabad, Dist. Osmanabad. ...Respondents

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Mr. M.B.Kolpe, Advocate for the Petitioner.
Mr. N.T.Bhagat, Advocate for the Respondent Nos. 1 & 2.

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CORAM : RAVINDRA V. GHUGE, J.
DATE : 10-07-2019.

ORAL JUDGMENT :

01. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

02. The petitioner is aggrieved by the impugned Orders dated 18.11.2017 passed by the District Magistrate, Osmanabad suspending the license of the petitioner to operate the cracker manufacturing factory and the Order dated 5.2.2019 by which the Divisional Commissioner, Aurangabad has rejected the appeal and confirmed the Order of the District Magistrate.

03. The learned Advocate for the petitioner submits that the petitioner has the license for manufacturing crackers and also for the sale of such crackers under Section 6-F of the Explosives Act, 1884. On 30.11.2015, the District Magistrate issued a further license for manufacturing of fire works, gun powder and selling of fire crackers in form No. LE-1 and LE-5. The petitioner has drawn an insurance policy for the period 30.8.2016 till 29.8.2017.

04. It is submitted that the factory was observing a holiday on 21.10.2017 for a month after the Diwali season. On 18.11.2017, the petitioner had undertaken the cleaning of the factory. Two workers, who were working in the store room, were cleaning the area and suddenly there was an explosion. One worker got fully burnt and died and another worker suffered grave burn injuries, who subsequently died under hospitalization.

05. The incident was intimated to the Tahsildar and the matter reached the District Magistrate, who issued an Order under Rule 118(5) of the Explosives Rules, 2008 framed under the Explosives Act, 1884. The petitioner has, therefore, approached the Divisional Commissioner by preferring an appeal under Rule 121 of the Rules. By the impugned Judgment dated 5.2.2019, the appeal was

dismissed.

06. The learned Advocate for the petitioner has placed reliance upon Rule 118(1)(III) to support his contention that his license could not have been suspended without an opportunity of hearing. He, therefore, submits that the impugned Orders deserve to be quashed and set aside and the license of the petitioner deserves to be restored forthwith.

07. The learned A.G.P. submits that as an accident took place on 18.11.2017 on account of the explosion resulting in the instantaneous death of one person and one employee being badly burnt, that the District Magistrate immediately suspended the license of the petitioner. He submits that subsequently the injured workman also died. It is in these circumstances that the State Government was of the view that the license of the petitioner deserves to be suspended.

08. I find that the answer to this issue lies in Rule 118(5) of the 2008 Rules. For clarity Rule 118 is reproduced as under :

"Rule 118. Suspension and revocation or cancellation of license :

(1) Every license granted under these rules

shall-

(I) stand canceled, if-

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

(b) the license is convicted and sentenced under any criminal offences or ordered to execute under Chapter VII of the Code of Criminal Procedure, 1973, a bond for keeping peace for good behaviour.

(II) Stand canceled, if the no-objection certificate is canceled by the authority issuing the same or District Magistrate or the State Government in accordance with rule 115.

(III) be liable to be suspended or canceled by an order of the licensing authority or any contravention of the Act or these rules or of any condition contained in such license, or by order of the Central Government, if it is satisfied that there are sufficient grounds for doing so:

Provided that before suspending or canceling a license under this rule, the holder of the license shall be given an opportunity of being heard.

(2) The suspension or cancellation shall take effect from the date specified therein.

(3) An order of suspension or revocation of a license shall be deemed to have been served if sent by post of the address of the licensee

entered in the license.

(4) The suspension of the license shall not debar the holder of the license from applying for the renewal.

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

(i) Where the license 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 imminent danger to the public :

Provided that where a license 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

(ii) Where the license is suspended or canceled by the Central Government, if that Government considers that in the public interest or in the interest of the security of the State, such opportunity should not be given.

(6) A licensing authority or the Central Government suspending or canceling a license shall record its reason for so doing in writing."

09. It is therefore obvious that the suspension of

the license of the petitioner was under Rule 118(5)(i) after the District Magistrate noticed the imminent danger to the public and considering that a major accident had occurred in the factory killing one person on the spot and seriously injuring the other, had directed the suspension of the license of the petitioner.

10. The learned Advocate for the petitioner submits that the Order of suspension of his license has still not resulted in a proper hearing of the matter and no further Order of confirmation of suspension or cancellation of the license or lifting of the suspension, has been passed by the Competent Authority.

11. The learned A.G.P. submits that appropriate directions can be issued to the respondent authorities to conduct such a hearing and pass final Orders within a time frame.

12. Since I am of the view that the suspension of the license of the petitioner is on account of the imminent danger to the public at large noticed by the District Collector and since he is empowered to pass such an Order, this petition need not be entertained. As such this petition is disposed off. Rule is discharged.

13. The petitioner agrees to appear before respondent No. 2 District Magistrate, Osmanabad on 29.7.2019 at 11 A.M. Respondent No. 2 shall thereafter cause a hearing in the matter. The relevant documents being considered by respondent No. 2 shall also be supplied to the petitioner. After receiving such documents, the petitioner would be at liberty to submit a written say or submissions as the procedure may be while conducting such proceedings and address the mind of respondent No. 2 on the said cause of action. It is expected that respondent No. 2 shall pass a reasoned Order either confirming the suspension or canceling the license or revoking the license. It is expected that the respondent No. 2 shall decide the said issue on or before 30.9.2019.

[RAVINDRA V. GHUGE]

JUDGE

Dahibhate/-