



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.10.2019

CORAM:

THE HONOURABLE MR. JUSTICE M. GOVINDARAJ

W.P (MD) No. 22369 of 2019

P. Ganesan

... Petitioner

Vs.

1. The District Collector,
Madurai District,
Madurai.
2. The District Revenue Officer,
Madurai District,
Madurai.
3. The Revenue Divisional Officer,
Usilampatti,
Madurai District.
4. The District Fire and Rescue Officer,
Fire and Rescue Department,
Madurai.
5. The Inspector of Police,
Checkanoorani Police Station,
Checkanoorani,
Madurai District.

6. Duraipandian

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus directing the respondents 1 to 5 herein to inspect the 6th respondent's Fire Works Factory namely V.B.M. Fire Works situated at Vadakkampatti, Usilampatti Taluk, Madurai District to revoke the license of the 6th respondent's Fireworks Factory as per Section 6 (E) of the Explosives Act 1884 and the explosive Rules 2008.

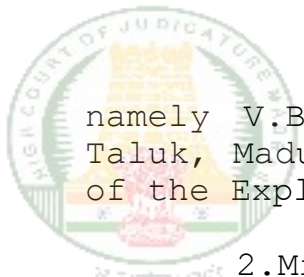
For Petitioner : Mr. J. Lawrance

For R6 : Mr. Mahaboob Athiff

for M/s. Ajmal Associates

ORDER

This writ petition is filed seeking a direction to the respondents 1 to 5 to inspect the 6th respondent's Fire Works Factory



namely V.B.M. Fire Works, situated at Vadakkampatti, Usilampatti Taluk, Madurai District and revoke the license as per Section 6 (E) of the Explosives Act, 1884 and the Explosive Rules 2008.

2.Mr.Mahaboob Athiff, learned counsel takes notice on behalf of the sixth respondent. In view of the nature of order going to be passed hereunder, notice need not be sent to the remaining respondents.

3.The petitioner is a permanent resident of Vadakampatti Village. In this area, one fire works factory called V.B.M. Fire Works, is manufacturing crackers under the license issued by the explosives department. In the year 2009, an accident has taken place, in which, the petitioner has lost his brother. Thereafter, a criminal case was filed and charges were framed and it is pending for trial. After 2009, there were three more accidents in the very same Fire Works factory. But, still the respondents have granted license to the manufacturer namely, the sixth respondent to continue the manufacturing activities. Therefore, the petitioner seeks a writ of mandamus, directing the official respondents to inspect the factory and take action as per Section 6 (E) of the Explosives Act, 1884.

4.The learned counsel appearing for the sixth respondent would submit that the accident has taken place in the year 2009, in respect of which, trial is pending before the competent criminal Court. After accident, the officials of the explosives department from Nagpur have inspected the premises of the sixth respondent and after satisfying themselves with the legal requirements, have granted renewal of license. The allegation made by the petitioner is purely on the basis of disputed facts. Since the licensing authorities have vested with power either to grant or reject the license, it is for them to apply mind and take a decision as held by the Hon'ble Supreme Court in the case reported in **(1985) 3 Supreme Court Cases 131 [State of U.P. and another Vs. Rajaram Jaiswal and another]**. Therefore, the writ petition is not maintainable and the same deserves to be dismissed.

5.I have considered the rival submissions made on either side.

6.It is true that an accident has taken place in the year 2009 and a criminal case is pending before the Judicial Magistrate, No.I, Usilampatti. As per Section 6 (E) of the Explosives Act, 1884, the concerned authority shall satisfy himself with regard to the license conditions and take a decision either to suspend or revoke or vary the license conditions. When the authority needs to consider all the materials available before him and take a decision on subjective satisfaction, it is not open to the Court to direct them to carry out their function as directed by the Court. Such



direction will amount to usurping the jurisdiction of the licensing authority. Therefore, this Court shall not usurp the powers of the licensing authority and give directions.

7.The learned counsel appearing for the petitioner would further contend that there were three more accidents after 2009. In such circumstances, it is open to the petitioner to file an FIR and question the process adopted by the licensing authority in granting license. In a writ petition, under Article 226 of the Constitution of India, this Court cannot issue directions to the licensing authority to revoke license on the basis of the facts alleged by the petitioner. Even for revoking license, it requires elaborate enquiry on the disputed facts. Under Article 226 of the Constitution of India, this Court cannot exercise power of licensing authority and therefore, the writ petition is not maintainable. The legal right projected by the petitioner will entitle him only to file a Public Interest Litigation and the present writ petition is not maintainable and accordingly, the same is dismissed. No costs.

Sd/-

Assistant Registrar(P & A)

// True Copy //

Sub Assistant Registrar(CS)

Mj

TO

- 1.The District Collector,
Madurai District,
Madurai.
- 2.The District Revenue Officer,
Madurai District,
Madurai.
- 3.The Revenue Divisional Officer,
Usilampatti,
Madurai District.
- 4.The District Fire and Rescue Officer,
Fire and Rescue Department,
Madurai.



5.The Inspector of Police,
Checkanoorani Police Station,
Checkanoorani,
Madurai District.

+1CC TO MR.AJMAL ASSO., Advocate Sr. No.94565

+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 94228

W.P. (MD) No.22369 of 2019
23.10.2019

GKG (CO)

TR(07.11.2019) 4P 8C