



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.29750 of 2019
and
W.M.P.No.29649 of 2019

A.Sheik Abdul Khader

...Petitioner

Vs.

The Joint Chief Controller of Explosives,
South Circle, 2nd Floor,
Shastri Bhavan, Haddows Road,
Nungambakkam,
Chennai.

...Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order bearing No.E/SC/TN/24/577(E41695) dated 05.11.2018 issued by the respondent and quash the same on the ground that the same is arbitrary, illegal and without any legal basis and consequently directing the respondent to renew the petitioner's licence No.E/SC/TN/24/577(E41695) under Form LE-5 of Explosives Rules, 2008 dated 25.03.2014.

For Petitioner : Mr.R.Shankar Ganesh

For Respondent : Mr.J.Madhanagopal Rao

O R D E R

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order bearing No.E/SC/TN/24/577(E41695) dated 05.11.2018 issued by the Respondent, quash the same and consequently to direct the respondent to renew the Petitioner's Licence.

2. The case of the prosecution is that, he is an occupier

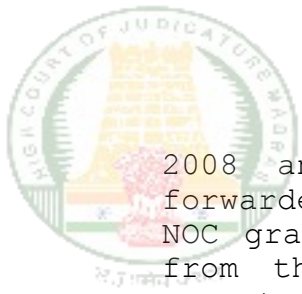


cum partner of M/s.M.A.Stores and it is a registered Partnership Firm, carrying out the partnership business of sale of fire works and sparkles and the Licence was granted in favour of the petitioner's father on 12.10.1978 and the same was renewed periodically. While so, the license was reissued in the Firm's name "M/s. M.A. Stores" in pursuance of the application made by the petitioner's father for inclusion of petitioner as well as his brothers' names as partners in the licence of the partnership firm "M/s. M.A. Stores". Thereafter, the sale of fireworks was carried out without any hindrance and the petitioner made an application dated 26.02.2019 before the respondent for the renewal of licence.

3. While such being the case, the respondent officials inspected the petitioner's premises on 31.10.2018 and thereby, issued a Suspension order dated 05.11.2018 vide their letter No.E/ SC/ TN/ 24/ 577 (E-41695), based on the violations observed, during the time of inspection, that is, another Fireworks shop of M/s C.K.Nanjappan & Co was found located at a distance of 6.1 metres from the petitioner's fireworks shop and it is a violation of Rule 86(3) of Explosive Rule, 2008. Further, even on receipt of the explanation dated 20.11.2018 submitted by the petitioner, the respondent continued his suspension order and added that, if any intent to represent in person to do so within the stipulated period with prior appointment vide letter dated 19.12.2018. Hence, challenging the said impugned suspension order dated 05.11.2018 issued by the respondent, the writ petition is filed.

4. The learned counsel for the petitioner submitted that, the petitioner's licence was renewed periodically by the respondent on the basis of the drawings submitted by the petitioner and after scrutinising the documents. While so, the issuance of suspension order and show cause notice is against the section 6E (3) of the Explosives Act, 1884 and Rule 118(2) of Explosives Rules 2008 and further the petitioner being the old licence holders are entitled to protection under Section 18 (8) of the Explosives Act, 1884 and 139(2) of Explosives Rules, 2008. However, without considering the mandatory provisions, the respondent has mechanically passed the said impugned suspension order, which is not sustainable. Hence, he submitted that this Court may quash the impugned suspension order dated 05.11.2018 passed by the respondent in letter No.E/ SC/ TN/ 24/ 577 (E-41695) and consequently directs the respondent to renew the petitioner's licence.

5. The learned counsel appearing on behalf of the respondent submitted that, the explanation dated 20.11.2018 submitted by the petitioner was not satisfactory as there was no explanation in respect of non-compliance of Rules 86(3) of Explosives Rules,



2008 and also a copy of the letter dated 19.12.2018 was forwarded to the District Authority with a request to review the NOC granted by his office, however, no reply has been received from the District Authority. He further submitted that, the opportunity of being heard in person was given to the petitioner and the petitioner has not availed the said opportunity. He further more submitted that, as against the impugned suspension order / show cause notice, there is an appeal remedy available before the Appellate Authority under Rule 121 of Explosives Rules, 2008. However, without exhausting the said remedy, filing the present writ petition is not sustainable. Hence, he prays this Court for dismissal of the writ petition.

6. Heard the arguments advanced by the learned counsel on either side and perused the materials available on record.

7. In view of the fact that remedy of appeal is available under section 121 of the Explosives Rules, 2008, this Court without expressing any opinion on the merits of the case, issues direction to the petitioner to file an Appeal before the Appellate Authority under rule 121 Explosives Rules 2008 within a period of four weeks from the date of receipt of a copy of this order by enclosing a copy of this order. If such appeal is filed, the appellate authority is directed to consider the same and pass appropriate orders in accordance with law within a period of six weeks thereafter.

8. This Writ Petition is disposed of. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

skt

To

The Joint Chief Controller of Explosives,
South Circle, 2nd Floor,
Shastri Bhavan, Haddows Road,
Nungambakkam,
Chennai.



Copy to:

The Appellate Authority /
Chief Controller of Explosive,
South Circle,
Chennai.

WEB COPY

W.P.No.29750 of 2019
and
W.M.P.No.29649 of 2019

GPL (CO)
SU (16/03/2022)