

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.10.2022

CORAM

THE HONOURABLE Mrs. JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition (MD) No.24019 of 2022

S.Vignesh

.. Petitioner

Versus

1.The Commissioner of Police,
Tirunelveli City,
Tirunelveli.

2.The Deputy Commissioner of Police (Law and Order),
Tirunelveli City,
Tirunelveli.

3.The District Officer,
Fire and Rescue Service Department,
Palayamkottai,
Tirunelveli.

.. Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing respondents to issue temporary crackers licence to the petitioner for his premises, bearing D.Nos.102N and 105, Seiyathu Complex, Madurai Road, Tirunelveli, based on the application, dated 06.09.2022.

For Petitioner : Mr.P.T.Ramesh Raja

For Respondents 1and 2 : Mr.B.Thanga Aravindh
Government Advocate (Crl. Side)

For 3rd Respondent : Mr.D.Sadiq Raja
Additional Government Pleader

ORDER

The petitioner has prayed for issuance of a Writ of Mandamus, directing respondents to issue temporary licence to sell crackers for his premises, bearing D.Nos.102N and 105, Seiyathu Complex, Madurai Road, Tirunelveli, based on the application, dated 06.09.2022.

2.Heard Mr.P.T.Ramesh Raja, learned counsel appearing for the petitioner, Mr.B.Thanga Aravindh, learned Government Advocate (Criminal side), who takes notice for the respondents 1 and 2 and Mr.D.Sadiq Raja, learned Additional Government Pleader, who takes notice for the third respondent. By consent of both sides, the Writ Petition is taken up for final disposal at the admission stage itself.

3.According to the petitioner, his father namely, A.Subramanian was running a small juice shop at Door Nos.102N and 105, Seiyathu Complex, Madurai Road, Tirunelveli and he used to sell crackers during Deepavali festival for the past several years, by obtaining necessary licence from the authorities concerned. Due to cardiac arrest, he died on 14.02.2019. Thereafter, the petitioner applied to the first respondent for temporary licence to sell crackers in the above said premises and the same is pending under consideration of the respondents 1 and 2.

4.Further, according to the petitioner, he has produced all the necessary documents along with Form – 4, application for grant of licence to possess and sell explosives and also paid the necessary fees for the same. In such circumstances, the first respondent issued a communication dated 13.10.2022, stating that as per the report submitted by the third respondent, there is a EB meter box inside the aforesaid shop and there is a EB Pole, carrying high tension wires, outside the shop and refused to give No Objection Certificate. Hence, the first respondent directed the petitioner to give an explanation as to why the temporary licence application should not be rejected. Accordingly, on 15.10.2022, the petitioner submitted a letter, stating that he has taken sufficient steps to protect the E.B. meter box, located inside the shop and also taken sufficient precautionary measures, so as to prevent any untoward incident due to the high tension wires.

5.The petitioner submitted that in order to grant temporary licence during festival seasons, precautionary measures have to be taken only under Rule 84 of the Explosives Rules, 2008, which does not mandate anything with regard to the location of the E.B. meter box inside the shop and a E.B. Pole, carrying high tension wires, outside the shop. In such circumstances, the third respondent cannot refuse to give No Objection Certificate to the first respondent.

6.The petitioner further submitted that earlier, he filed W.P.(MD)No. 15325 of 2020, seeking issuance of temporary licence to him for selling crackers during Deepavali festival. This Court, by order 04.11.2020, disposed of the said Writ Petition, directing the authorities concerned to expedite the formalities in getting No Objection Certificate from the Fire Services Department and to issue a temporary licence for selling crackers to the petitioner. Based on the said order, the first respondent issued licence for selling crackers during Deepavali festival and last year also, the first respondent issued licence for selling crackers in the same premises and there was no untoward incident. The temporary crackers shop licence is applied only to sell crackers during Deepavali festival season. As the Deepavali festival for this year is approaching fast, *i.e.*, on 24.10.2022, the petitioner submitted an application on 06.09.2022 itself. However, the said application has not been processed till date and no order granting temporary licence has been passed. In the said circumstances, having left with no other effective and efficacious alternative remedy, the petitioner has approached this Court by way of filing the present Writ Petition for the relief stated supra.

7.The learned Additional Government Pleader appearing for the third respondent submitted that as per Rule 83 of the Explosives Rules, 2008, the shop, for which, the licence has been applied, shall have no electrical

apparatus or battery or oil lamp or similar equipments capable of producing spark or ignition and all electrical wiring in the shop be fixed and effectively sealed or conduited or mechanically protected; the main switch or circuit breaker be provided at the immediate assessible position out side the premises. He further submitted that the third respondent has given an opinion that No Objection Certificate could not be issued on the ground that there is a EB meter box inside the aforesaid shop and there is a EB Pole, carrying high tension wires, outside the shop. The petitioner's contention that already the authorities have given licence for the previous years, cannot be accepted for the reason that the rules prevailing previous years, cannot be used this year and as already pointed out, the respondent Police have issued certain restrictions, regarding issuance of temporary licence for running a crackers shop.

8.The learned Government Advocate (Criminal side) appearing for the respondents 1 and 2 submitted that the respondents Police are not willing to give No Objection Certificate on the above said grounds and if the petitioner chooses any other place, the same can be considered.

9.In view of the above said submissions made by the learned counsel on either side, this Court directs the respondents to consider granting of temporary licence to the petitioner, in accordance with law, if he chooses

another place for running a crackers shop, following the restrictions given by the authorities, within a period of two days from the date of receipt of the representation of the petitioner, showing another place for running a crackers shop.

10.This Writ Petition stands disposed of with the above directions. No costs.

Index : Yes/No

19.10.2022

Note:- Issue order copy on 20.10.2022.

To

- 1.The Commissioner of Police,
Tirunelveli City,
Tirunelveli.
- 2.The Deputy Commissioner of Police (Law and Order),
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Tirunelveli.
- 3.The District Officer,
Fire and Rescue Service Department,
Palayamkottai,
Tirunelveli.

W.P.(MD)No.24019 of 2022

V.BHAVANI SUBBAROYAN, J.

smn2

Order made in
W.P.(MD)No.24019 of 2022

19.10.2022