

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.11252 OF 2021

Royal Fire Works,
Through Its Proprietor,
Sameer S/o. 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

Mr. G. V. Wani, Advocate h/f Mr. Sachin S. Randive Advocate for
the petitioner
Mr. K. B. Jadhavar, AGP for the respondent/State

CORAM : KISHORE C. SANT, J.

RESERVED ON : 13th JULY, 2023

PRONOUNCED ON : 11th SEPTEMBER, 2023

P. C.

1. This petition is filed challenging the judgment and
order passed by the learned Divisional Commissioner,
Aurangabad dated 04-02-2020 rejecting the appeal of the

petitioner and the impugned judgment the order dated 27-09-2019 passed by the learned District Magistrate suspending the license granted to the petitioner under the Explosive Act, 1884 and Rules, 2008 (Hereinafter referred to as 'the said Act') is confirmed.

2. Facts are in short are that respondent No.1 is the State of Maharashtra and respondent No.2 is the District Magistrate, Osmanabad the authorities are under the said Act. The petitioner is in business of manufacturing of fire crackers. He obtained the license for manufacture and store of fire crackers and also selling of gun powder, fire crackers items etc, having license No.LE-1 under the said Act. Said license was issued on 30-11-2015 and same has been renewed from time to time till 31-03-2018. As a condition the petitioner also insured the employees & the factory. The period of insurance policy was from 03-08-2017 to 21-08-2018. However, after the insurance policy was expired unfortunately an incident took place on 21-10-2017 when the factory was closed. Only two employees were

at the factory for checking store room. While checking the stock room, unfortunately some fire packets exploded and because of that one of the walls collapsed. One of the employees came under the wall. Other employee received injuries in the explosion. Unfortunately both the employees died in the said incident on receiving the injuries. Because of the incident a complaint came to be lodged against the petitioner for the offences punishable under Sections 304-A, 337, 338 and 286 of the Indian Penal Code and under Sections 3 and 4 of the Said Act.

3. Because of the incident panchanama was drawn. On drawing the panchanama the authorities also decided to take action against the petitioner and the incident was reported by learned Talathi, Indapur to the Tahasildar, Washi by communication dated 18-11-2017. Talathi also sealed the premises by drawing the panchanama. The premises was taken in possession by the learned Talathi.

4. On the basis of report respondent No.2 passed an order on 18-11-2017 and suspended the license without issuing notice by invoking powers under Section 6-E (3) & Rule 118 of the said Act. Later on respondent No.2 withdrew the license by order dated 27-09-2019. The petitioner being aggrieved filed an appeal before the learned Divisional Commissioner, Aurangabad. The learned Divisional Commissioner after getting the reports and after hearing the parties, decided the appeal by the impugned judgment and order.

5. The petitioner came to be acquitted from the criminal case by the learned Sessions Judge, Bhoom by its judgment and order dated 17-12-2019. The learned Commissioner in the appeal concluded that the petitioner had not given proper training to the employees. The employees were not ensured on the date of incident. The remains of the wall blown up long distance indicating that explosives stored in the room were more than its capacity. As per rule 7 of the rules no proper care was taken by the petitioner and rejected the appeal.

6. Learned advocate for the petitioner submits that under Section 6-E the authorities have power to suspend the license for sufficient reasons. Reading of section 6-E of the said Act only gives power to suspend a license for such period as it thinks fit or revoke a license. In this case no period of suspension is mentioned. The authority do not pass an order for certain period. In the present case no case of revocation of the license is made. The license itself is withdrawn by respondent No.2 by order dated 27-09-2019. The Authorities does not have such a power. This major aspect is not considered by the authorities. He further submits that remains of the wall were blown up to long distance is also not correct. From the panchanama it is clear that those were blown up only at the distance of the 10 feet. One of the employees namely Ravindra Lagade died because of collaping of wall and not as a direct result of the explosion of the material stored in the room. The other employee namely Shohel Shaikh also died after he was admitted in the hospital after sometime. He submits that as per

Rule 118 of the said Act the authorities have to record proper reasons while passing the order. No such reasons are mentioned in the order. Under Rule 118 license can be cancelled only in contingencies as mentioned in Rule 118. It is not clear from the order as to exactly for which rule license is cancelled. He submits that the order passed by the learned authorities is, totally arbitrary and deserves to be quashed and set aside.

7. Learned AGP submits that the action is taken after the panchanam is executed. In this case even the learned Collector, has visited the spot personally. It is specifically recorded by the learned Collector that no Rules are followed by the petitioner. Though the petitioner is acquitted, acquittal is not clean acquittal, because of only reason, one of the witnesses did not support the prosecution. Hence, justified the order passed by the authorities. In case of violation of rules, Section 6-E gives power to the authorities to suspend and revoke the license. Section 6-E and Rule 118 relevant portion reads as under:-

Section 6-E:- Variation, Suspension and revocation of licenses:

(1) The licensing authority may vary the conditions subject to which a license has been granted except such of them as have been prescribed and may for that purpose require the holder of license by notice in writing to deliver-up the license to it within such time as may be specified in the notice.

(2) The licensing authority may, on the application of the holder of a license, also vary the conditions of the license except such of them as have been prescribed.

(3) The licensing authority may, by order in writing suspend a license for such period as it thinks fit or revoke a license-

(a) if the licensing authority is satisfied that the holder of the license is prohibited by this Act or by any other law for the time being in force to manufacture, possess, sell, transport, import or export any explosive, or is of unsound mind, or is for any reason unfit for a license under this Act; or

(b) if the licensing authority deems it necessary for the security of the public peace or for public safety to suspend or revoke the license; or

(c) If the license was obtained by the suppression of material information or on the basis of wrong information provided by the holder to the license or any other person on his behalf at the time of applying for the license; or

(d) if any of the conditions of the license has been contravened; or

(e) if the holder of the license has failed to comply with a notice under sub-section (1) requiring him to deliver-up the license.

(4) The licensing authority may also revoke a license on the application of the holder thereof.

(5) Where the licensing authority makes an order varying the conditions of a license under sub-section (1) or an order suspending or revoking a license under sub-section (3), it shall record in writing the reasons therefor and furnish to the holder of the license on demand a brief statement of the same unless in any case the licensing authority is of the opinion that it will not be in the public interest to furnish such statement.

(6) A court convicting the holder of a license of any offence under this Act or the rules made thereunder may also suspend or revoke a license.

(7) An order of suspension or revocation under sub-section (6) may also be made by an appellate court or by the High Court when exercising its powers of revision.

(8) The Central Government may, by order in the Official Gazette, suspend or revoke, or direct any licensing authority to suspend or revoke, all or any licenses granted under this Act throughout India or any part thereof.

(9) On the suspension or revocation of a license under this section the holder thereof shall without delay surrender the license to the authority by whom it has been suspended or revoked or to such other authority as may be specified in this behalf in the order of suspension or revocation.

Rule- 118:- Suspension and revocation or cancellation of license:

- (1) Every license granted under these rules shall:
- (a) the license has ceased to have any right for the lawful possession over the licensed premises;
 - (b) the licensee is convicted and sentenced under any criminal offences involving violence or moral turpitude for a term of not less than six months at any time during a period of five years after the expiration of the sentence or ordered to execute under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974), a bond for keeping peace for good behavior;
 - (c) the licensed premises or manufacturing facilities are leased to any other person, firm, company, society;
- (II) stand cancelled, if the non-objection certificate is cancelled 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 cancelled by an order of the licensing authority for 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 cancelling 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 to the address of the license entered in the license.

(4) The suspension of a 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 cancelled 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 cancelled 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 for the Central Government suspending or cancelling a license shall record its reason for so doing in writing.

8. Thus, it is clear that the authorities may by order in writing suspend the license for such period as he thinks fit or revoke the license only in the case mentioned in Section 6-E-(3) (a to d). On going through the order it is found that no case is made out under clause-A of Section 6-E. At the most case is

made out under Section 6-E(3) clause-b i.e. it is necessary for the security of the public peace or for public safety. Further it falls under Section 6-E(3) clause-d; contravening of the any of the condition of the license. However, none of the reasons are mentioned in the order. The order of the learned Commissioner shows that action has been taken on recording the conclusion that the petitioner has not taken proper care and therefore, serious incident has taken place and two lives are lost. While passing the order the learned Commissioner has not considered that there is acquittal recorded by the learned Sessions Judge in the criminal case. It is mentioned that case was made out to lodge the complaint under Section 304 of the IPC. However by the time, the learned Commissioner decided the appeal. The petitioner was already acquitted.

9. Thus, considering section 6-E and Rule 118, this court finds that action taken of revocation of the license is harshed. Since 18-11-2017 license is suspended and thereafter is revoked. Thus, even considering this aspect this court finds that

now it is more than five years that the license of the petitioner is revoked. Record also shows that employees had filed application under Workman Compensation Act, where the compromise has taken place and the employees are paid the compensation in view of the compromise. Considering all above, this court finds that impugned order needs to be quashed and set aside. Hence, the following order.

ORDER

- a] The writ petition stands allowed.
- b] The impugned order dated 04-02-2020 passed by the learned Divisional Commissioner, Aurangabad stands quashed and set aside.
- c] The petitioner to file an undertaking that in future he shall not commit any contravention of any of the rules under the said Act and in case contravention is found he shall be liable for action, within two weeks.

[KISHORE C. SANT, J.]