



W.P.(MD).No.14768 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 12.12.2023

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD).No.14768 of 2020
and W.M.P(MD).Nos.12426 and 12428 of 2020 and 13427 of 2022

Angel Fire Works Industries,
Door No.4/375-A, Kodeswarar Nagar,
Sankaralingapuram Post,
Sankaralingapuram,
Virudhunagar District.
Rep.by its Proprietor,
S.Rajkumar

... Petitioner

Vs.

1.The Controller of Explosives Petroleum and
Explosive Safety Organization,
FRDC Complex, New ESI Hospital,
Sivakasi West, Virudhunagar District.

2.The Deputy Chief Controller of Explosives,
Sivakasi, Virudhunagar District.

3.M/s.Kannan Fire Works Factory,
Door No.3/69, Poochakapatti,
Naranapuram, Sivakasi East,
Sivakasi Taluk,
Virudhunagar District.

4.The District Revenue Officer,
Virudhunagar Collectorate,
Virudhunagar District.

... Respondents



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(*R4 is impleaded vide order dated 19.02.2021 made in W.M.P(MD).No.2363 of 2021 in W.P(MD).No.14768 of 2020*)

Prayer: Writ petition is filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned orders of the respondents 1 and 2 herein in ref.A/E/SS/TN/21/165(E.129163) dated 22-09-2020 for the purpose of proposed possession for sale of Fire Works from a magazine situated in Survey No.1281/2, Ondipulinaicenoor, Virudhunagar District; impugned order in ref.No.A/E/SS/TN/20/111(E.129159) dated 22.09.2020 for the proposed manufacturing of Fire Works in Survey Nos.1287/1, 1288/1, 1289/1, 1289/2, 1172/1, 1281/2, 1286/1 and 1290 and the permission is granted for construction of manufacturing factory and the impugned order in ref.No.A/E/SS/TN/22/67 (E.129161) dated 22.09.2020 for the proposed possession for use of Fire Works Microcard from a magazine situated in Survey No.1281/2, and the permission was granted for construction of magazine, quash the same as illegal and consequently, direct the respondents 1 and 2 herein to consider the objection of the petitioners dated 16.09.2020 and 28.09.2020 making inquiry in accordance with law before grant of licence to the third respondent.

For Petitioner : Mr.S.Srinivasa Raghavan

For Respondents : Mr.S.Jeyasingh
Senior Panel Counsel
Government of India
for R1 and R2
Mr.C.Susi Kumar for R3



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ORDER

This Writ Petition has been filed challenging the impugned proceedings of the respondents 1 and 2 dated 22.09.2020, granting approval in favour of the third respondent for the proposed construction utilized to run the Fireworks Factory and for a consequential direction, not to grant any permission or licence to run the Factory by the third respondent.

2. The grievance of the petitioner is that as per the safety distance, no construction can be permitted for carrying out the firework manufacturing within 200 meters as provided under the Explosives Rules, 2008 and that the third respondent was attempting to put up the Fireworks Factory in violation of the Rules. The objection that was made by the petitioner in this regard was not considered and the respondents 1 and 2 proceeded to grant approval for putting up the construction. Aggrieved by the same, the present Writ Petition was filed before this Court.



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3. The respondents 1 and 2 have filed a counter affidavit and the relevant portions are extracted hereunder:-

“7. That Kannan Fireworks Factory now proposed to expand their manufacturing capacity by purchasing additional lands in survey numbers 1172/1, 1281/2, 1286/1 and 1290 in Ondipulinaickenoor village in Virudhunagar district and converted from proprietorship firm to partnership firm and for expanding their manufacturing capacity they approached PESO, Sivakasi and they accorded in -Principle Approval vide approval A/E/SS/TN/20/111(E129159) dated 22/09/2020 since they did not mention in the proposal that there existed a factory within 200 meter Hence approval was accorded.

8.I submit that PESO had not granted any licence to Kannan Fireworks Factory and it is a requirement under Explosives Rules 2008 that for seeking grant of licence, a No Objection Certificate from Additional District Magistrate-cum-District Revenue Officer, Virudhunagar District. It is submitted that even if NOC granted by the NOC issuing authority and before grant of licence, PESO will verify the requirement of 200 meter distance between two such factories, and if it is not fulfilled, PESO will not grant licence.

9. It is submitted in simple nutshell, Angel fireworks Industry is PESO licensed factory. Kannan fireworks factory is DRO licensed factory. PESO had given only in principle approval under Rule 101 of Explosives Rules, 2008 and Licence is not granted so far to Kannan fireworks factory. In-Principle



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approval also was accorded by PESO since Kannan Fireworks Factory in their application did not reveal there was a factory within 200 meter from their factory. Had it been revealed, approval might have not been granted. The copy of letter issued by this office to DRO Virudhunagar Annexure-I and copy of letter issued by PESO Nagpur Annexure-II.”

4. Heard the learned counsel appearing for the petitioner, the learned Senior Panel Counsel for Government of India appearing for the respondents 1 and 2 and the learned counsel appearing for the third respondent.

5. This Court carefully considered the submissions made on either side and the materials available on record.

6. Insofar as the grant of approval, No Objection Certificate, licence etc., the same is dealt with under Chapter VIII of the Explosive Rules, 2008. Rule 101 of the said Rules, deals with prior approval that should be granted by the Authority in order to put up the construction for manufacture, possession for sale, use, transport of explosives under the Rules. After this approval is granted, the concerned licensee must seek



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for No Objection Certificate and only after getting No Objection Certificate, the construction can be put up. After No Objection Certificate is issued, the commencement of construction can be started under Rule 104 of the said Rules and thereafter, an application must be made for grant of licence under Rule 105 of the said Rules. Rule 107 of the said Rules deals with the grant of licence and Certificate by the Licensing Authority.

7. In the instant case, the approval that was granted by the respondents 1 and 2 through the impugned proceedings dated 22.09.2020 is at the stage of Rule 101 of the said Rules. The counter affidavit of the respondents 1 and 2 shows that no licence was granted in favour of the third respondent and that the third respondent is bound to get No Objection Certificate from the concerned District Revenue Officer. Even after No Objection Certificate is granted, an inspection will be made by the respondents 1 and 2 and on verification, if it is found that the Rule of 200 metres distance is not fulfilled, no licence will be granted.

8. In view of the above, it is clear that the respondents 1 and 2 have not taken any decision for grant of licence to the third respondent to



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establish the Fireworks Factory in the proposed place. In view of the specific stand that has been taken by the respondents 1 and 2, the grievance expressed by the petitioner has been sufficiently redressed and it is not necessary for this Court to interfere with the impugned prior approval granted by the respondents 1 and 2 in favour of the third respondent.

9. This Writ Petition is disposed of in the above terms. There shall be no order as to costs. Connected miscellaneous petitions are closed.

12.12.2023

Index : Yes/No
Internet : Yes/No
ssb

To

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N.ANAND VENKATESH.J.,

ssb

**Order made in
W.P.(MD).No.14768 of 2020**

**Dated :
12.12.2023**