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45-WP-14315-2021 modified

This order is corrected pursuant to speaking to minutes of order dt. 05.05.2025.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

45 WRIT PETITION NO. 14315 OF 2021

Pravin Satish Mantri

VERSUS

The District Collector / District Magistrate And Others

...

Mr. Amit A. Mukhedkar, Advocate for the Petitioner.

Mr. P. D. Patil, AGP for Respondent-State.

Mr. R. K. Ingole-Patil, Advocate for Respondent No.3.

CORAM : KISHORE C. SANT, J.

DATE : 17th APRIL 2025

PC :-

1. Heard the parties.
2. By consent of the parties, the petition is taken up for final disposal at the stage of admission.
3. The grievance of the petitioner in this petition is that while he applied for renewal of the license under the Explosives Rules, the the learned Collector has cancelled the license itself. The said order is also confirmed by the appellate authority i.e. the learned Divisional Commissioner, Aurangabad. It is the case of the petitioner that the

petitioner is having license to carry out the business of selling fire cracker since last 10 years. He applies for renewal of the license for the period of five years from 31st March 2020. The learned Collector, while considering the application, passed the order rejecting the application for renewal and further also cancelled the license itself bearing No. ND/MAG/EL/1/2014. The petitioner filed an appeal before the learned Divisional Commissioner, Aurangabad. The learned Divisional Commissioner partly allowed the appeal and remanded the matter back for fresh consideration by the Collector. The learned Collector, on remand, by order dated 26th April 2021 again passed the similar order and cancelled the license.

4. The petitioner again approached the Divisional Commissioner challenging the order passed by the learned Collector. The learned Divisional Commissioner also, by the impugned order, dismissed the appeal of the petitioner.

5. It is the case of the petitioner that under Rule 72, when he filed an application for renewal, the authorities were bound to grant renewal. Instead of granting renewal, the learned Collector by misinterpreting

Rule 78 of the Explosives Rules, 2008 has cancelled the license itself. This course is not permissible to the authority. If the authority want to cancel the license, the authority has to follow the procedure as given under Rule 115 of the said Rules. He further submits that even Rule 78 is wrongly interpreted by the authority while passing the order. He thus submits that the order passed by the learned Divisional Commissioner confirming the order passed by the learned Collector deserves to be quashed and set aside by renewing the license of the petitioner.

6. The learned AGP vehemently opposed the petition. He submits that the authorities have rightly considered the application. Since the application was not complying with the condition, the order was passed.

7. The learned Advocate for the Corporation also vehemently opposed the petition. He submits that the shop of the petitioner is situated on the ground floor in the crowded locality. It is for this reason, the authorities have rightly passed the order. There is question of public safety as the shop is situated in crowded area.

8. For the purpose of considering the rival submissions, Rules 78, 83, 112, 114 and 115 are quoted herein below for the purpose of

convenience.

“Rule-78. Magazine, store house, or shop to be at ground level. - A magazine, store house, or shop shall be constructed at ground level only. A magazine or storehouse shall be a single storey building.

Rule-83. Explosives permitted for possession and sale from shop.- (1) No explosives, other than fireworks, gun powder, small arm nitro compound and safety fuse, permitted in licence shall be stored in a shop for possession and sale.

(2) Construction of shop.- The shop shall be constructed of a brick, stone or concrete and the shop shall be closed and secured so as to prevent unauthorised person from having access thereto.

(3) The premises shall have storage area not less than nine square meters and not more than twenty five square meters.

(4) The shop shall-

(a) be located on the ground floor of a building completely separated from other parts of the building by substantial walls having independent entrance and emergency exit from open air and having doors opening outwards, if applicable.

(b) Not be situated in the sub-level or basement or mezzanine floor.

(c) not be situated under the upper floor used for the purpose of dwelling;

(d) Not be situated under or nearby any staircase of lift;

(e) be accessible for fire fighting; and

(f) 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 accessible position outside the premises.

Rule-112. Renewal of licence.—(1) Every licence except the licences

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granted for a specific period not exceeding one year, shall be renewable for a maximum period of five financial years ending on the 31st March.

(2) Every application under sub-rule (1) for renewal of the licence shall be accompanied by the following documents, namely :—

- (a) application in Form RE-1;
- (b) the original licence;
- (c) prescribed renewal fee.

(3) A licence may be renewed by the authority empowered to grant such licence :

Provided that a licence which has been granted by the Chief Controller may be renewed without any alteration by a Controller duly authorised by the Chief Controller in this behalf:

Provided further that a licence, which has been granted by the District Magistrate, may be renewed without any alteration by a Sub-Divisional Magistrate or an Executive Magistrate duly authorised by the District Magistrate in this behalf.

(4) Every application for the renewal of a licence shall be made so as to reach the licensing authority or the authority empowered to renew the licence on or before the date on which the licence expires.

(5) If the application for renewal reaches the renewing or licensing authority on or before the date of expiry, the licence shall be deemed to be in force until such date as the licensing authority renews the licence or until an intimation that the renewal of the licence is refused has been communicated to the applicant.

(6) The same fee shall be charged for the renewal of a licence for each year as for grant thereof:

Provided that if the renewal application together with complete documents is received by the licensing authority after the date of expiry but not later than six months from the date of expiry; and if the licensing authority is satisfied that such delay is beyond the control of the licensee, the licence may, without prejudice to any other action that may be taken in this behalf, be renewed on payment of penalty fee which is equal to one year's licence fee.

(7) In case of an application for the renewal of the licence for a

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period of more than one year at a time, the fee prescribed under proviso of sub-rule (6), if payable, shall be paid only for the first financial year of renewal.

(8) Every licence granted under these rules other than a licence granted for a specified period shall be renewable for a maximum period of five years where there has been no contravention of the Act or these rules framed there under or of any condition of the licence so renewed.

(9) Where a licence renewed for more than one financial year is surrendered before its expiry, the renewal fee paid for the unexpired portion of the licence shall be refunded to the licensee:

Provided that no refund of renewal fee shall be made for any financial year during which-

(a) the licensing authority received the renewed licence for surrender;

(b) any explosive is received or stored on the authority of the licence.

(10) No licence shall be renewed if the application for renewal is received by the licensing or renewing authority after three months of the date of its expiry. An application for revalidation received after three months of the expiration of the licence shall be considered as an application for a new licence.

(11) When a licence is renewed by the Chief Controller or a Controller, an intimation to that effect shall be sent to the District Magistrate concerned and when a licence is renewed by the District Magistrate, intimation to that effect shall be sent to the Controller having jurisdiction.

Rule 114. Refusal to grant approval or licence.—The authority refusing to grant approval or licence including amendment and renewal shall record in writing the reasons for such refusal and communicate the same to the applicant. Before refusal, the applicant shall be given an opportunity of being heard.

115. Cancellation of no objection certificate.—(1) No objection certificate granted under rule 103, may be cancelled by the authority

issuing the same or authority superior to it, if such authority is satisfied, that—

(a) the licensee has ceased to have any right for the lawful possession over the licensed premises;

(b) the licensee is convicted and sentenced for any criminal offence or ordered to execute under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974), a bond for keeping peace for good behaviour;

(c) the cancellation of no objection certificate is absolutely necessary for public peace and safety:

Provided that before cancellation of the no objection certificate, the licensee shall be given a reasonable opportunity of being heard.

(2) The authority issuing the no objection certificate or the District Magistrate or the State Government cancelling no objection certificate shall record, in writing, the reasons for such cancellation and shall immediately furnish to the licensee and the licensing authority concerned, copy of the order cancelling the no objection certificate and the reason for such cancellation.

(3) In case an appeal is made against the cancellation of no objection certificate, the appellate authority may consult, if so desired, the Chief Controller.

9. So far as renewal is concerned, it is to be considered under Rule 112 of the said Rules. In Rule 112, there is nothing to indicate that the authority can cancel the original license itself granted to the licensee. On the contrary, sub-Rule (1) of Rule 112, makes it clear that the every license is renewable. It only requiring an application in form RE-1, original license and prescribed renewal fee as per sub-Rule (2). Rule 8 empowers the authority not to renew license if there is any

contravention of the act or the rules. It was open for the authority to refuse renewal of license for any contravention. However, it is not done in the present case.

10. Rule 114 deals with refusal to grant approval of license. In this Rule, there is a provision that renewal can be refused for the reasons to be recorded and communicated to the applicant. This rule however, requires an opportunity to be given to such applicant of being heard. Rule 115 deals with the cancellation of no objection certificate which grants no objection under Rule 103 that is as regards the authority i.e. Local Government for the reasons to cancel no objection certificate already issued. However, it is required to be done. The rule provides that before this cancelling no objection certificate such authority must be satisfied the criteria given in clauses (A)(B)(C). For cancellation of no objection also hearing is required to be given to the person asking for no objection certificate.

11. The criterias while granting license are given in Rules 78 and 83. From looking to the impugned order it is seen that the reason given for cancellation of licence is violation of Rule 78. Another reason given is

that the Corporation has refused to give no objection. In the order, there is nothing indicating that any hearing is given to the petitioner though it appears that notice is given. This Court, therefore, finds force in the argument of the learned Advocate for the petitioner that license is not for storage of magazine. The license given to the petitioner is only for fire crackers. This Court in similar Writ Petition No. 4638 of 2021 has already held that when the application was made only for renewal, the authority illegally exercised the powers under Rule 115. In the present case also this Court finds that, the application was filed only for renewal and while considering that application, the authority has cancelled the license itself.

12. It is pointed out by the learned Advocate for the respondent and learned AGP that in that writ petition, the cancellation was done without issuing prior notice and that was main ground on which that petition was allowed. On going through the order, it does appear that in the present case, notice was issued to the petitioner. Notice was however, for cancellation of the license itself. Notice was not under Rule 114. If the authority wanted to cancel the license, there ought to have been a

specific notice issued in that regard. When the application for renewal was to be rejected, notice ought to have been given under Rule 114. The impugned order, therefore, deserves to be quashed and set aside. However, it shall be open for the authority to take appropriate action by following procedure. with this, following order:

13. Writ petition stands allowed in terms of prayer clause (B) and © by keeping it open to the authorities to take appropriate action by following procedure given under the Act and the Rules.

14. With this writ petition stands disposed off.

[KISHORE C. SANT, J.]