

Reserved

Court No. - 5

Case :- WRIT - C No. - 4042 of 2021

Petitioner :- Manoj Mittal

Respondent :- Union Of India And 4 Others

Counsel for Petitioner :- Archi Agarwal

Counsel for Respondent :- A.S.G.I.,C.S.C.,Gaurav Kumar Chand

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Ms. Archi Agarwal, learned counsel for the petitioner, Shri Manoj Srivastava, learned Standing Counsel for the State and Shri Gaurav Kumar Chand, learned counsel appearing for Union of India.

2. By means of this writ petition, the petitioner has challenged the orders dated 24.08.2019 passed by District Magistrate, Saharanpur, 27.09.2019 passed by Joint Chief Controller of Explosives, Central Circle Agra, order dated 5.11.2020 passed by Commissioner, Saharanpur and order dated 15.12.2020 passed by Chief Controller of Explosives, Nagpur, whereby No Objection Certificate granted to the petitioner was cancelled and consequent thereof, his licence was also cancelled.

3. Brief facts of the case are that the petitioner was engaged in the business of selling fireworks, crackers and sparkler, to which he had duly obtained 'No Objection Certificate' as per the Rule 103 of the India Explosives Act, 1884 (hereinafter referred to as "Act") with the conditions mentioned therein and thereafter, the licence was also granted to the petitioner, which was also renewed from time to time. Further, the licence of the petitioner was renewed on 09.08.2017, which was valid up to 31.03.2021. On 09.11.2017, a show cause notice was issued to the petitioner to shift his present shop to an isolated open and safe place, away from the

business market, which is presently located in the densely populated area. In response to the aforesaid show cause notice, the petitioner replied on 08.12.2017. Further, notices were issued on 15.01.2018, 13.08.2018, 30.10.2018, 15.06.2019, 30.6.2019 to which, the petitioner submitted detailed reply on 01.09.2018, 3.11.2018 & 29.6.2019 and in the reply, the petitioner has submitted that after conducting thorough enquiry on 01.09.2018, licence of the petitioner was renewed. Further, on 27.10.2018, press release was issued to to all the fireworks sellers to shift their shops in an isolated place, thereafter, an order was passed on 24.08.2019 cancelling the NOC of the petitioner by District Magistrate, Saharanpur against which, the petitioner preferred a Writ C No.29654 of 2019, the same was dismissed on 18.09.2019 on the ground of alternative remedy. Thereafter, the petitioner approached to the Commissioner, Saharanpur challenging the order dated 24.08.2019 by filing an appeal along with stay application and vide order dated 26.09.2019, the said stay application was rejected and in the appeal, the lower court record was summoned but during the pendency of the said appeal, vide order dated 27.09.2019, the licence of the petition was cancelled against which, the petitioner preferred Writ C No.34537 of 2019, which was dismissed on 24.10.2019 on the ground of alternative remedy. Thereafter, on 08.01.2020 filed an appeal before the Chief Controller of Explosives, Nagpur against the order dated 27.09.2019 passed by Joint Controller of Explosives, Agra. Appeal pending before the Commissioner, Saharanpur was dismissed on 5.11.2020 and thereafter vide dated 15.12.2020, aforesaid appeal filed before Chief Controller of Explosives, Nagpur was also dismissed. Hence, the present petition.

4. Learned counsel for the petitioner submitted that the petitioner has been granted NOC after due verification as per the Indian Explosives Act, 1884 (hereinafter referred to as "Act") and Indian Explosive Rules, 2008 (hereinafter referred to as "Rules"). She further submitted that the petitioner did not violated any provision of the Act and Rules, but still in contravention from the provisions of the Act and Rules, NOC to possess, sell the fireworks, crackers and sparklers was cancelled and consequent thereof, by the impugned order dated 27.09.2019, licence was also cancelled. She further submitted that the authorities acted

illegally and in arbitrary manner cancelling the same. She further submitted that the NOC was wrongly cancelled as there is no provision under the Act, which authorise the authorities to cancel the NOC on the ground that the shop in question of the petitioner is situated in a densely populated area. It has further argued that there is no provision under the Act or Rules that NOC can be cancelled on the said ground, which was renewed from time to time after due enquiry.

5. In support of his claim, learned counsel for the petitioner has relied upon the judgements of Division Bench of this Court passed in **Writ C No.12866 of 2015 (Mohd Zuber Vs. State of U.P., & 6 othes), decided on 13.02.2018** and **Writ C No.11415 of 2018 (Shabi Ali Vs. State of U.P. and Ors.), decided on 03.05.2018**. She has further submitted that the authorities, in the counter affidavit, have referred the judgment of Hon'ble Apex Court delivered in the case of **Arjun Gopal and others Vs. Union of India and others (Writ Petition (Civil) No.728 of 2015), decided on 23.10.2018**, which is not application to the facts and circumstances of the present case as the said judgment was only with regard to sale of fireworks in Delhi and North Capital Region. He prays for allowing the present writ petition.

6. *Per contra*, learned counsel for the respondents supports the action and the impugned orders by submitting that since the business premises of the petitioner situates in the densely populated area, which is dangerous for the peace and safety of the society, therefore, the impugned orders have rightly been passed. He has further submitted that time and again, the petitioner was given opportunity to shift his shop away from the densely populated area ,but in vain as the petitioner, in his wisdom, chose not to reply the notices sent to him; consequent thereof, NOC was cancelled.

7. Learned Standing counsel further submitted that a detailed guidelines were framed as per the provision of Rules, wherein it was mentioned that there should be complete ban of sale of fireworks in densely populated areas.

8. In support of his contention, he has placed reliance upon the judgment of Jharkhand High Court passed in the case of **Geeta Devi Vs. the State of**

Jharkhand, 2018 3 JLJR 359 and submitted that the authorities are competent to take an action for cancelling the NOC as well as licence for selling fireworks/ crackers in the public peace and safety. He prays for dismissal of this writ petition.

9. Rebutting to the said submission of the learned Standing Counsel, learned counsel for the petitioner has submitted that the judgment relied upon by the counsel for the respondents is of no aid to them as the facts of that case are that the petitioner therein was carrying out of business in violation of Rule 83 of Rules, whereas in the case in hand, neither any of the authorities below nor even in the counter affidavit, a word has been whispered by the respondents of any violation of the Acts and Rules. Further, guidelines framed as argued by the learned Standing Counsel is with regard to grant of temporary licence to be issued by the District Magistrate, which cannot be implemented as well as no shelter can be taken by the respondents with regard to NOC and licence already granted to the petitioner as permanent licence. She further submitted that the temporary licence has been granted during the festival time, whereas the petitioner is selling the crackers round the year.

10. The Court has perused the records.

11. Admittedly, the petitioner was granted NOC for storage and sale of fireworks from his shop situated at Bazar Shahid Ganj, Saharanpur since inception i.e. from the year 1993 and to which the licence was also granted, which was renewed from time to time. Further, there is no allegation of any violation of the provisions of the Acts and Rules; notices were issued to the petitioner for shifting his shop from its current location to some isolated place i.e. away from the densely populated area. Furthermore, aforementioned stand was taken by the respondents in view of the public peace and safety, hence the petitioner was asked to shift his shop from its current location.

12. On perusal of the records, it shows that the action was taken against the petitioner in pursuance of issuance of show cause notice and consequent thereof, cancelling the NOC as well as licence mainly on the ground that the vicinity of the shop is thick populated. It is admitted between the parties that the petitioner

has not violated any provision of the Act and Rules, specifically Rule 83 (4A) of Rules.

13. On a pointed query made to the learned Standing Counsel as there is any provision in the Act or Rules, which contemplates for suspending or cancelling the licence in the garb of area, which is thick population, he could not reply in affirmative, but have only relied upon the guidelines by referring the para XIX (e) clause which prohibits for storage and sake of fireworks in densely populated area.

14. On perusal of the said guidelines, it only shows that the said guidelines were with regard to the sale of crackers and grant of licence to the temporary licencees. Further, learned Standing Counsel could not shows any provision under the Act and Rules, which empowers the authorities to frame such guidelines for permanent licencee. Further, clause XXII reads as under:-

“.....

The above guidelines are subject to Updation based on recent judgments of Hon’ble High court/Supreme Court, if any which will be conveyed to all as and when received.”

15. On perusal of the aforesaid guidelines, it does not indicate any specific direction of any superior court for making such guidelines or any provision under the Act and Rules to the authorities to issue such.

16. The Division Bench of this Court in the cases of Mohd. Zuber (supra) has specifically held that the Commissioner cannot cancel the NOC on the ground that the shop in question is situated in densely populated area as Act and Rules does not complete the same. The same view has been reiterated in another judgment of Division Bench of this Court in the case of Shabi Ali (supra) in para 34 and 41 held as under:-

“34. Before the District Magistrate Varanasi the petitioner has placed all the relevant provisions of law and therefore has prayed that the ground on which the "NOC" has been cancelled are not punishable under the statute. According to the petitioner the shop in question satisfies the

requirement of Rule 83 and in particular clause (4)(a) of Rule 83 and remaining conditions of Rule 83 are also not attracted in the case of the petitioner. However, on extraneous consideration, increase in population in area and apprehension of loss to public life and property, which are not relevant circumstances so as provided under Rule 2008, the "NOC" could not have been denied to the petitioner specially when all other conditions under the Act 1884 and Rules 2008 are satisfied.

41. With regard to the population in an area in which such licence can be granted, learned standing counsel again could not dispute that there is no provision under statute or rules in this regard and population as such is not a relevant factor for grant or denial of licence or possession and sale of fireworks and crackers under the Act 1884 and Rules 2008."

17. The above quoted judgments of Division Bench of this Court has been passed in the year 2018 whereby the Court has observed that increase of population in the area wherein there is an apprehension safety of public life and property are not relevant, as provided under the Act and Rules, the NOC cannot be denied or cancelled.

18. Further, Since there are two Division Benches' judgments of this Court, the judgment relied upon by the respondent passed in the case of Geeta Devi (supra) of the Jharkhand High Court, that too of Single Bench, is of no aid to the respondents.

19. Thus, once the law has been laid down by this Court, which has not been modified or set aside by the competent Court, the authorities in the State of U.P., are bound to follow the same.

20. In view of the above facts and circumstances as well as considering the guidelines and judgments cited by the respective parties, impugned orders cannot sustain in the eye of law and same are hereby quashed.

21. Accordingly, the writ petition is **allowed** with cost of Rs. 10,000/- to be paid within 15 days from the date of production of certified copy of this Order.

22. The District authorities concerned are directed to re-instate the licence of the petitioner after due enquiry within a week from the date of production of certified copy of this Order.

Order Date :- 09.11.2023

Pravesh Mishra/-