

(2010) 09 KL CK 0335
In the High Court Of Kerala
Case No : W.A. No. 1458 of 2010

C.A. Rafi

APPELLANT

Vs

The Additional District Magistrate, The Joint Chief Controller
and The Chief Controller of Explosives

RESPONDENT

Date of Decision : 09-09-2010

Acts Referred:

Explosives Act, 1884 — Section 5, 5(1), 5(2), 6B, 6C
Explosives Rules, 1983 — Rule 101, 102, 103, 103(3), 108
Explosives Rules, 2008 — Rule 115(1)

Citation : (2010) 4 KLT 342

Hon'ble Judges : Jasti Chelameswar, C.J;P.R. Ramachandra Menon, J

Bench : Division Bench

Advocate : Dinesh Mathew J. Muricken, for the Appellant; No Appearance, for the Respondent

Final Decision : Dismissed

Judgement

1. Chelameswar, C.J.—Aggrieved by a judgment dated 17th June, 2010 in W.P. (C). No. 18876 of 2010, the unsuccessful petitioner therein preferred the present appeal.

2. It appears from the judgment under appeal that the appellant along with two others are the joint owners of a particular piece of property. In the said piece of property a granite quarry exists. One of the co-owners, Mr. Paulson, allegedly transferred his interest in the said property in favour of the appellant herein. For the purpose of quarrying, it appears that explosives were being used and initially a licence under the provisions of the Explosives Act, 1884, hereafter referred to as "the Act" read with the Explosives Rules, 1983 was issued in favour of the abovementioned Paulson.

3. Consequent to the alleged transfer of interest in the property, the appellant herein made an application seeking transfer of the above mentioned licence in favour of the appellant herein. Along with the said application, the appellant also

produced a letter (Ext.P3) allegedly from the original licensee, i.e., Paulson, to the effect that the original licensee does not have any objection to the transfer of the licence.

4. By the impugned order under Ext.P6 the first respondent herein directed the appellant herein to submit a fresh application (obviously seeking appropriate licence). The relevant portion of the said order reads as follows:

Since the title of the premises in Sy. No. 1069/2,3 in Chengaloor Village for which the No Objection Certificate was granted was transferred to S/Sri. C.A. Raphy and P.L. Raphy recommendation is hereby issued, for cancelling the No Objection Certificate granted to Sri. K.I. Paulson as per Rule 115(1)(a) of the Explosive Rules 2008. At the same, Sri. C.A. Raphy is hereby directed to submit a fresh application, as per Explosive Act for granting No Objection Certificate/Licence for the possession and use of the explosives in the above mentioned premises.

5. The licence in issue was initially given under the Explosive Rules, 1983 in favour of Mr. Paulson which, it appears, was renewed from time to time.

6. Section 5 of the Explosives Act, 1884, hereinafter referred to as "the Act", authorises the Government of India to make rules consistent with the provisions of the Act to regulate or prohibit the manufacture, possession, use, sale, transport, import and export of explosives. Such a regulation or prohibition can be either of all the explosives or the specified class of explosives. However, the use of explosives is permitted under and in accordance with the conditions of licence granted under the Act and the Rules. Section 5(1) reads as follows:

5(1) The Central Government may, for any part of India make rules consistent with this Act to regulate or prohibit, except under and in accordance with the conditions of a licence granted as provided by those rules, the manufacture, possession, use, sale, transport, import and export of explosives, or any specified class of explosives.

Section 5(2) authorises the making of the rules for various purposes enumerated therein, the details of which are not necessary for the present case. Section 6B stipulates that whenever an application seeking a licence under the Act is made, the same is either required to be granted or refused after making an appropriate enquiry.

Section 6C enumerates the various circumstances in which the licencing authority is mandated to refuse a licence. However, such a refusal is subject to the further condition that the reasons for such refusal are required to be recorded and furnished to the applicant on demand.

7. Various rules are framed in exercise of the powers conferred under Sections 5 and 7 of the Act from time to time. The latest set of rules is made in the year 2008, called "The Explosives Rules, 2008". By Rule 139 of the said Rules, the rules made earlier in force under the Act, i.e., the Explosives Rules, 1983 are

repealed. Rule 139 reads as follows:

139. Repeal and Savings.- (1) The Explosives Rules, 1983 are hereby repealed.

(2) Notwithstanding such repeal -

(a) all licences, permits or duplicates thereof granted or renewed under the said rules and all fees imposed or levied shall be deemed to have been granted, renewed, imposed or levied, as the case may be, under the corresponding provisions of these rules;

(b) all approvals given and all powers conferred by or under any notification or rule shall, so far as they are consistent with the Act and these rules, be deemed to have been given or conferred by under this Act or these rules.

It can be seen from Sub-section (2) extracted above that all the licences granted or renewed under the repealed rules are deemed to be licences granted or renewed, as the case may be, under the corresponding provisions of the new rules.

8. Under Rule 7, it is declared that no person shall manufacture, import, export, transport, possess for sale or use an explosive except as authorised or licensed under the rules. Rule 7 reads as follows:

7. Control over manufacture, import, export, transport, possession for sale or use of explosives.- No person shall manufacture, import, export, transport, possess for sale or use an explosive except as authorised or licensed under these rules.

It can be seen from the rules that having regard to the dangerous nature of the substance, every aspect of dealing in the explosives is required to be licenced, except as exempted under the Act and Rules. Chapter IV of the Rules deals with the manufacture of the explosives and the various aspects for regulation dealing with manufacture, while Chapter V. deals with the import and export of explosives. Chapter VI deals with transportation of the explosives.

9. Chapter VII deals with the possession, sale and use of explosives. Rule 71, which occurs under Chapter VII, declares as follows:

71. Possession in licensed premises.- (1) A person holding licence for possession of explosives granted under these rules shall store the explosives only in premises specified in the licence.

(2) The licensed magazine or store house shall be kept securely closed or locked at all times except when goods are being placed in or taken from it or when it must be kept open for some other purpose in connection with the management of such premises.

(3) The keys of the licensed magazine shall, at all times be kept secured in licensee's own custody or of his authorised agent and shall be produced for opening the magazine or store house whenever so required by an inspecting

officer.

(4) The name and address of the person along with passport size photograph with whom the keys will be kept shall be furnished to the licensing authority and the Controller having jurisdiction.

It can be seen from the above extract that a person holding a licence for possession of explosives, either for sale or use, is required to store only in the premises specified in the licence, known as "magazine" or "store house". Both the expressions are defined under Rule 2, Sub-rules (31) and (55)* respectively.

10. Chapter VIII of the Rules deals with the various aspects of the licensing for any one of the purposes mentioned earlier. Rule 99 reads as follows:

99. Licences and licensing authorities.- Licences and certificates for specific purposes may be granted by the authorities specified in Part I of Schedule IV.

It can be seen that under the Act and Rules, various licences and certificates are required to be obtained in connection with the various activities in the context of the explosives. Schedule IV appended to the rules contains a detailed list of the various purposes for which licences are granted and the appropriate licensing authority with reference to each one of the forms of licence.

11. The licence in issue, it is admitted on all hands, is a licence contemplated under Schedule IV, Part 1 appended to the said Rules. Entry 3(a) of the said Schedule reads as follows:

Purpose for which granted	Licence Form	Licensing Authority
to possess for use, explosives not exceeding 25 kilogrammes of Class 1 or 2 or 3 and 1500 numbers of detonators; and 1500 meters of detonating fuse or safety fuse at any one time in a magazine.	LE-3	District Magistrate for agricultural purpose or in small quarry

12. Rule 101* stipulates that a person desiring to obtain a licence of any kind with respect of explosives, shall obtain prior approval from the authority empowered to grant such licence by submitting documents mentioned in Rule 113. Rule 113 contains a table indicating the various documents required to be submitted for seeking the approval contemplated under Rule 101 with reference to each of the purposes specified under the various entries of the table. Relevant in the context of the present case is Entry 9, which reads as follows:

Sl.	Purpose of Article	Licence Documents	Documents No.	Licence number	Form
1	required	required for grant	as per	for approval of	Part I of licence
2					Schedule IV

1	2	3	4	5	6	9	Licence to possess	3(a)	LE-3	(i)	Form AE-3	(i)	Form AE-3	for use, for (for possession (and (for possession agricultural purpose use); and use); or in small quarry, explosives not exceeding 25 (ii) Plans of the (ii) Plans of the kilogrammes of Class proposed magazine completed 1, 2 or 3; 1500 and the site showing magazine and the numbers detonators; approach road; site showing
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1500 meters of safety distances, approach road; Detonating Fuse at licensed capacity; safety distances, any one time in a licensed capacity; magazine. (iii) Passport size photographs of the (iii) Completion

occupier along with certificate;

documentary evidence of (iv) Passport size nomination as photographs of occupier as per rule the occupier along 2; with documentary evidence of

(iv) Scrutiny fee as nomination as

per Schedule IV, occupier as per

Part 2. rule 2;

(v) Licence fee as per Schedule IV, Part 2.

13. Rule 102 stipulates that after obtaining an approval under Rule 101, a person desiring to obtain a licence shall also obtain a "No Objection Certificate", either from the District Magistrate or Director General of Mines Safety, as the case may be, before commencing the construction of the premises. The "premises" obviously in the context means the "magazine". Rule 103, in so far as it is relevant, reads as follows:

Rule 103(3) The District Magistrate on receipt of application referred in Sub-rule (1), shall make verification of the antecedents of the applicant, lawful possession of the site, genuineness of the purpose, interest of public and any other verifications or enquiries as may be specifically required by the licensing authority to be carried out, if any, and on any other matter as deemed necessary.

(a) For verification of the interest of public, the District Magistrate shall forthwith cause a notice to be published calling upon the public to submit objections, if any, with reasons thereof, within a period of one month from the date of publication of the notice and specifying the date, time and place for consideration of objections by him. Where the site of the proposed premises lies within 1.5 kilometers of the limits of the jurisdiction of any town planning municipal authority or port or air port or satellite or space craft launching station or similar establishments of national importance, the District Magistrate shall cause the notice to be served to such authority or establishment. The day of hearing for consideration of objections shall be fixed as early as possible, after the expiration of the period of one month from the date of publication of notice. On receipt of objection, the District Magistrate shall call the person or persons raising objection and also the applicant, giving not less than seven clear days before the day fixed for hearing for consideration of the objection. On the day fixed for the hearing or any day to which such hearing may be adjourned from time to time, the District Magistrate shall hear any objection relating to the purpose of no objection certificate and shall make such enquiry, as he may deem necessary to assess justification of such objection.

(b) If the quantity of explosives does not exceed one hundred kilograms or in

case of ANFO or Liquid Oxygen Explosives or SME or transport of explosives in a road van, the notice for public for objection as stated in Clause (a) shall not be necessary.

14. Rule 108 permits the transfer of a licence obtained under the Rules and it also stipulates the various documents required to be submitted by an applicant seeking transfer of a licence (proposed transferee). Rule 108 reads as follows:

108. Transfer of licence.- (1) A licence granted under these rules may be transferred by the authority empowered to grant the licence.

(2) An applicant who desires to get the licence transferred in his favour shall submit to the licensing authority -

- (a) an application in form appropriate for grant of the licence;
- (b) specimen signature of the applicant or his authorised person;
- (c) a letter from the existing licensee signed by the authorised person requesting the transfer of licence in favour of the applicant or a succession certificate from a competent court in case of death of a licensee being an individual;
- (d) original licence issued to the existing licensee;
- (e) copies of supporting documents regarding transfer of rights of the premises in favour of the applicant; (f) requisite scrutiny fee and transfer fee;
- (g) copies of all approved drawings in the name of the applicant;
- (h) status of the applicant whether individual, proprietary firm, partnership firm, company, association or society or otherwise - documentary evidence along with names, addresses of the proprietor or partners or directors or members as the case may be, and photographs of the occupier, to be submitted;
- (i) a no objection certificate from the District Magistrate for transfer of the licence in favour of the applicant:

Provided that no objection certificate shall not be necessary if the applicant holds a licence for which a no objection certificate has already been granted.

It can be seen that under Sub-rule (2) Clause (i), in the case of a transfer of a licence also a "no objection certificate" from the District Magistrate is required to be obtained. Though the rule is not very categorical about the nature of the District Magistrate's responsibility in granting such a no objection certificate, we are of the opinion that the scope of the authority and the nature of the legal obligation cast on the District Magistrate cannot be in any way different than the authority and scope of the District Magistrate while granting a no objection certificate under Rule 103, the relevant portion of which is already extracted earlier. One of the relevant considerations either for granting or declining to grant a no objection certificate is the lawful possession of the site where the explosives are proposed to be used.

15. In the instant case when an enquiry was conducted on the application of the appellant seeking transfer of the licence originally issued in favour of Mr. Paulson, it appears that the original licensee (Paulson) raised certain objections regarding the claim of the appellant. In view of such objection and also the report of the Tahsildar, Mukundapuram dated 29.3.2010, the first respondent declined to transfer the explosives licence as prayed for and advised the appellant to make a fresh application in accordance with law if he is still desirous of securing an explosive licence for the purpose of use of explosives for quarrying operations in the property referred to above.

16. Aggrieved by the said direction, the appellant herein filed the writ petition which was dismissed in limine. Hence this appeal.

17. The learned Counsel for the appellant argued that the first respondent could not have declined a no objection certificate for transfer of licence as much as transfer is permissible under the Explosives Act and the rules made thereunder.

18. We regret our inability to accept the submission of the learned Counsel. As already noticed, under Sub-rule (3) of Rule 103, before granting a no objection certificate, the District Magistrate is obliged (1) to conduct verification of the antecedents of the applicant, (2) lawful possession of the site in which the explosives are proposed to be used pursuant to the licence, (3) genuineness of the purpose of use, (4) interest of the public and (5) any other matter which may appear to be appropriate to the authority having regard to the facts and circumstances of the case.

19. It appears from the order that the original licensee objected to the application of the appellant seeking transfer of the licence. Under what circumstances the original licensee who according to the appellant is alleged to have agreed to transfer the licence subsequently turned round and objected is not the concern of the first respondent. The first respondent, in our view, was perfectly justified and is within the limits of the jurisdiction in declining to grant no objection certificate in view of the dispute between the alleged transferor and the appellant herein. The existence of a dispute between the alleged transferor and transferee regarding the transfer is certainly a ground which is required to be kept in mind before granting or refusing the no objection certificate for the transfer of the licence.

In such circumstances, we do not see any merit in the writ appeal and it is accordingly dismissed at the admission stage.

*Rule 2(31) "magazine" means a building or structure (other than an explosives manufacturing building) intended for storage of explosives, specially constructed in accordance with the specification provided under these rules or of a design and approved by the Chief Controller.

Rule 2(55) "store house" means independent building other than a magazine

meant to possess fireworks not exceeding 5000 kilogrammes or safety fuse not exceeding 50000 meters, not for sale but for transfer to own licensed shop.

*Rule 101(1) A person desiring to obtain a licence for manufacture, possession for sale, use, transport of explosives, under these rules, shall obtain prior approval from the authority empowered to grant such licence, by submitting documents mentioned in Rule 113.