

(1975) 09 AHC CK 0022

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 7550 of 1975

Dr. Pradeep Kumar

APPELLANT

Vs

The Chief Controller of Explosives, Nagpur and Others

RESPONDENT

Date of Decision : 24-09-1975

Acts Referred:

Constitution of India, 1950 — Article 226
Explosives Act, 1884 — Section 17, 4, 5, 7
Explosives Rules, 1940 — Rule 81, 84, 85, 86, 88
Gas Cylinders Rules, 1940 — Rule 1

Citation : AIR 1976 All 266

Hon'ble Judges : P.N. Bakshi, J

Bench : Single Bench

Advocate : Prabodh Gaur, for the Appellant; Chand Kishore, for the Respondent

Final Decision : Dismissed

Judgement

P.N. Bakshi, J.—The petitioner is a registered Medical Graduate and resides in a house situate in an Ahata known as Chandrika Prasad Bagicha, situate in Mohalla Chunniganj, Kanpur. The Bagicha lies in one of the thickly populated commercial and residential localities of Kanpur. A trust was created in 1917 in respect of this Bagicha and one Mukandi Lal Garg was acting as its Managing Trustee till 22nd March, 1975, no new trustee has since been appointed.

2. The petitioner's case is that Srimati Rabia Begum respondent No. 4, who is a war widow, started raising construction over a portion of the afore-said Bagicha in May, 1975, in close proximity to the petitioner's residential house. On an enquiry the petitioner came to know that she had obtained a lease in respect of 1,000 Sq. yards of land in this Bagicha from Mukandi Lal Garg on 1-2-1975 for the construction of a godown for the storage of 500 gas cylinders. The petitioner's father Dr. M. G. Mangalani also resided with him. The other residents in different houses in this Bagicha are Virumal Dumble, F. C. Sayal and Ram Kishan Ramaini. The petitioner's case is that the residents of the locality sent

telegrams and letters to the District Magistrate, Senior Superintendent of Police and the Administrator, Nagar Mahapalika, Kanpur requesting them to prevent respondent No. 4 from, raising the constructions and storing gas cylinders but to no effect. There is a great panic in the locality as the storing of the gas cylinders is dangerous and its explosion would lead to tremendous loss of life and property of the residents of the Bagicha, Hence the present writ petition.

3. I have heard learned counsel for the parties. A preliminary objection has been taken by the respondent's counsel that the petitioner has no locus standi to file the writ petition. Reliance for this purpose is placed upon a decision reported in *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, . It is urged that the petitioner has failed to prove the existence of a legal right and as such is not entitled to maintain this petition. The aforesaid decision of the Supreme Court has been referred to in a subsequent decision of that Court reported in *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, . The Supreme Court observed as follows:

"This Court held in the decision cited supra that "ordinarily" the petitioner who seeks to file an application under Article 226 of the Constitution should be one who has a personal or individual right in the subject-matter of the petition. A personal right need not be in respect of a proprietary interest; it can also relate to an interest of a trustee. That apart, in exceptional cases as the expression "ordinarily" indicates, a person who has been prejudicially affected by an act or omission of an authority can file a writ even though he has no proprietary or even fiduciary interest in the subject-matter thereof. The appellant has certainly been prejudiced by the said order. The petition under Article 226 of the Constitution at his instance is, therefore, maintainable."

In the instant case the permission has been granted by the authorities concerned to the respondent No. 4 for the purpose of constructing a godown for storage of gas-cylinders. According to the allegations in the petition such an act will prejudicially affect the petitioner inasmuch as it will endanger his life and property and that of the residents of the Bagicha. As such, in my opinion, the preliminary objection has no legs to stand upon and must be repelled.

4. The petitioner's counsel has contended that it is incumbent upon respondent No. 4 to obtain a licence under the Indian Explosives Act and the Rules framed thereunder, for storing and sale of gas cylinders no such licence having been obtained, the respondent No. 4 is not entitled to store and sell the gas cylinders. I have been referred in this connection to the provisions of the Indian Explosives Act. Section 4(1) of this Act defines "explosive" as follows:

(1) Explosive-

(a) means gunpowder, nitroglycerine, dynamite, guncotton, blasting powders, fulminate of mercury or of other metals, coloured fires and every other substance, whether similar to those above-mentioned or not, used or manufactured with a view to produce a practical effect by explosion or a

pyrotechnic effect; and

(b) includes fog-signals, fireworks, fuses, rockets, percussion-caps, detonators, cartridges, ammunition of all descriptions, and every adaptation or preparation of an explosive as above defined. The liquid petroleum gas which is compressed in metal cylinders for use for domestic purposes is not included in this definition, but u/s 17 of the Indian Explosives Act the Central Government has been authorised to extend the definition of "Explosive" to other substances, which appear specially dangerous to life and property by a notification in the official gazette. Section 17 of the said Act runs as follows:

"17. The Central Government may, from time to time, by notification in the Official Gazette, declare that any substance which appears to the Central Government to be specially dangerous to life or property, by reason either of its explosive properties or of any process in the manufacture thereof being liable to explosion, shall be deemed to be an explosive within the meaning of this Act, and the provisions of this Act (subject to such exceptions, limitations and restrictions as may be specified in the notification) shall accordingly extend to that substance in like manner as if it were included in the definition of the term "explosive" in this Act."

By Notification No. M-1272 (I) dated 28th September, 1938, gas compressed in a metal cylinder has also been included within the definition of the term "explosive" as defined in the Indian Explosives Act. This notification runs as follows:

"No. M-1272 (1), dated the 28th September, 1938. In exercise of the powers conferred by Section 17 of the Indian Explosives Act, 1884 (4 of 1884), the Central Government is pleased to declare that any gas when compressed in any metal container whether such gas when so compressed be in the gaseous or liquefied state shall be deemed to be an explosive within the meaning of the said Act:

Provided that nothing in the above shall be deemed to affect the provisions of the notification of the Government of India in the late Department of Commerce and Industry, No. 596-D, dated the 6th December, 1919, relating to acetylene."

As such there can be no doubt that the gas in question would now be covered by the expression "explosive" as defined in the Indian Explosives Act and the Rules made thereunder would clearly be applicable.

5. Section 5 of the Indian Explosives Act relates to the power of the Central Government to make Rules as to licensing of the manufacture, possession, use, sale, transport and importation of explosives which runs 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 and importation of explosives, or any specified

class of explosives,

(2) Rules under this section may provide for all or any of the following among other matters, that is to say-

(a) the authority by which licences may be granted;

(b) the fees to be charged for licences, and the other sums (if any) to be paid for expenses by applicants for licences.

(c) the manner in which applications for licences must be made, and the matters to be specified in such applications;

(d) the form in which, and the conditions on and subject to which, licences must be granted;

(e) the period for which licences are to remain in force; and

(f) the exemption absolutely or subject to conditions of any explosives from the operation of the rules."

6. Section 7 of the Indian Explosives Act also authorises the Central Government to make rules consistent with the above rules for conferring powers of inspection, search, seizure, detention and removal. In exercise of the powers conferred by Sections 5 and 7 of the Act, the Central Government has framed the Explosives Rules, 1940. Rule 2 of the aforesaid Rules runs as follows:--

"2. Supersessions and savings:-- (1) The Indian Explosives Rules, 1914, the Berar Explosives Rules, 1914) and all rules and notifications issued by Local or Provincial Govts., under the Indian Explosives Act, 1884 (4 of 1884) are hereby superseded, but-

(i) all licences or duplicates granted or renewed and all fees imposed or levied shall be deemed to have been respectively granted, renewed, imposed or levied under these rules, and

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

(2) Anything not in conformity with these rules which was permitted to be done lay or under any rule in force immediately before the coming into force of these rules may, in special cases, be permitted by the Chief Inspector by order in writing to be continued for such period not exceeding (three) years as may be specified in the order." Thus acts permitted to be done under any rule framed under the Indian Explosive Rules 1914, Berar Explosive Rules, 1914 and the rules and notifications issued by the Local or Provincial Governments under the Indian Explosives Act, 1884 prior to the commencement of these Rules of 1940 were saved by the saving Clause.

7. In exercise of the powers conferred under Sections 5 and 7 of the Indian Explosives Act the Gas Cylinders Rules, 1940 have also been made for the purpose of regulating, manufacturing, transporting and importing of such gases vide Notification No. M-1272, dated 7th May, 1940. These rules were made after the "gas" in question was included within the definition of "explosive" by the Gazette Notification referred to above u/s 17 of the Indian Explosives Act. These rules provide for the construction and test of the cylinders, the marking of cylinders, precautions to be observed in carrying on the hydraulic tests, compressing and filling of cylinders, marking and labelling of cylinders and transport of cylinders etc. etc. From a detailed scrutiny of Gas Cylinders Rules it is obvious that they concern themselves only with the various precautions to be observed with regard to the gas cylinders.

There is no provision in the Rules with regard to the making of any application for licence for the storage and sale of the gas cylinders. Obviously, because the Gas Cylinders Rules were not concerned with the permission that may be granted to an applicant for carrying on his trade or business the Indian Explosives Act and the Rules framed thereunder required the making of an application for licence as specified therein by a person dealing with the storage and sale of explosives. The Gas Cylinders Rules were only concerned with, the safety and precautions which had to be taken when a licensee was dealing in the trade of storage and sale of gas cylinders. In other words the Gas Cylinders Rules can be taken as supplementary to the Rules framed under the Indian Explosives Act. As a matter of fact both the Gas Cylinders Rules, 1940 and the Explosives Rules, 1940 have been framed in exercise of the powers conferred under Sections 5 and 7 of the Act, though for different purposes. The absence of a rule in the Gas Cylinders Rules requiring a person to apply for a licence to run his business of storing and sale of gas cylinders will not absolve the applicant who desires to carry on this trade from applying under the provisions of the Indian Explosives Act and the Rules thereunder for the grant of a licence to run such a business.

8. Counsel for the respondents has submitted that such a licence has never been taken out by any applicant so far and that the mere permission to establish a godown for storage and sale of gas cylinders is sufficient compliance of the law. Merely because a provision of law has been over-looked so far is no justification for continuing an erroneous procedure in defiance of the law. The Indian Explosives Act is clearly applicable to the storage and possession of gas cylinders as held by me above. The Indian Explosives Act and the Rules framed thereunder made ample provision for an applicant seeking permission of the authority concerned for a licence to run such a business. I have already quoted Section 5 of the Indian Explosives Act above whereby the Central Government has been authorised to make rules consistent with the Act to regulate or prohibit the manufacture, possession, use, sale etc. of explosives, except in accordance with the conditions of a licence granted as provided by the Rules framed thereunder. Sub-section (2) of Section 5 of the Act directs the framing of Rules to provide for various details with regard to the various matters which concern the grant of

licences.

9. Rule 81 of the Explosives Rules, 1940 runs as follows:--

"81. Licence for manufacture, possession, use and sale. -- (1) No explosive shall be manufactured, possessed, used or sold except under and in accordance with the conditions of a licence granted under these rules.

(2) The licensee shall be responsible for all operations in connection with the manufacture, possession or sale of explosives which may be conducted in the licensed premises."

Rule 84 of the said Rules provides for an application for the grant of a licence and also renewal thereof. It runs as follows:

84. "Application for licence. -- (1) A person desiring to obtain or to renew a licence under these rules shall submit an application in writing to the authority empowered to grant such a licence:

Provided that where the licensing authority is the Central Government the application for the licence shall be submitted through the Chief Inspector.

(2) The application shall be signed by the applicant himself or by a person authorised by him in writing in this behalf, and shall, in the latter case, be accompanied by such authorisation.

(3) Every application for the grant or renewal of a licence to manufacture, possess or use explosives, shall be in Form C and shall be accompanied by a plan in duplicate, drawn to scale, of the proposed magazine or factory and of the site, showing the boundaries thereof and except in the case of an application for a licence in Form J or K specifying the matters referred to in Note (1) below Form C."

Rule 85 of the said Rules runs as follows:

"Grant of licences. -- (1) Licences may be granted by the authorities set forth in Schedule IV in the forms, for the purposes and on payment of the fees specified therein:

Provided that-

(a) no licence shall be granted to any person under the age of 18 years,

(b) no new licence in Form L or under Article 8 of Schedule IV shall be granted unless the provisions of Rule 86 have been complied with, Rule 86 of the said Rules deals with the procedure to be observed before a licence for a factory or magazine is granted. Rule 88 of the said Rules provides that every licence granted under these rules shall be held subject to the conditions endorsed on it and shall contain all the particulars which are contained in the form prescribed for it by these rules."

Under Rule 92 the Licensing Authority has been empowered to refuse the grant of a licence. Under Rule 93 a licence is also liable to be suspended and cancelled. Rule 95 gives a right of appeal against any order refusing to grant, amend or renew a licence, or suspending or canceling a licence. The aforesaid Rules clearly provide a comprehensive procedure for applying for the grant of a licence under the Indian Explosives Act, which I have held above, is applicable also to the facts and the circumstances of the present case. In my opinion, therefore, the requirements of law are that a licence should be obtained by an applicant under the provisions of the Indian Explosives Act before running a business for the storage and sale of gas cylinders.

10. After having arrived at the above finding a question arises as to what appropriate order should be passed in the present case. The petitioner is a War Widow. Her case appears to have been sponsored by the Government of India, Ministry of Defence, Directorate General Resettlement, New Delhi. On behalf of the respondent No. 4 a copy of the order issued by the Chief Inspector of Explosives in India, dated 29th April, 1975, Annexure D-3, has been filed. This order lays down various conditions requisite for the construction of the storage shed, and any building, keeping in view a minimum distance as the safety zone in inhabited localities. It also lays down certain other conditions which are necessary for the construction of these go-downs. It further lays down the necessity of providing fire extinguishers and taking other adequate precautions regarding the storage of gas cylinders. Under Clause 9 of this order the site of the storage shed has to be approved in writing by the local Fire Service Authorities from the point of view of fire-fighting. Annexure D-4 is the site-plan which has been approved by the District Magistrate, Kanpur and the Controller of Explosives, Nagpur. Ex. D-9 is a letter from the Indian Oil Corporation issued in favour of Srimati Rabia Begum, respondent No. 4. This letter runs as follows:

31st July, 1975

"Mrs. Rabia Begam, Proprietor, Imperial Gas Service, 96/6, Chunniganj, Kanpur. Madam,

We have checked your godown premises and found them in accordance with rules and specification as per the plan approved by the Chief Fire Officer on 25-3-1975, the District Magistrate, Kanpur, on 25-4-1975 and the Controller of Explosives, Nagpur on 29-4-1975.

Reference discussions please be advised that the unloading/loading of LPG Cylinders is done by our authorised contractor. This operation does not produce any unusual noise or disturbance.

Yours faithfully, Indian Oil Corporation Limited, Sd/- U. B. Sharma District Manager."

A perusal of these documents indicates that the godown which has been constructed by the petitioner fulfils the requirements of law. The plan has been

approved by the authorities concerned after due inspection. Admittedly the godown is situate at a distance of about 60 feet from the house of the petitioner. Even the representatives of the Indian Oil Corporation Ltd., have checked the godown premises in question and have found that it has been made in accordance with the rules and the specifications. Thus it is evident that factually the requirements of law as to the construction of the godown and the storing of the gas cylinders therein have been complied with, It appears that an application was filed on 29th April, 1975, on behalf of respondent No. 4 with the Chief Controller of Explosives. Before passing his order which is filed as Annexure "6" to the petition, a No-objection Certificate was obtained from the District Magistrate, Kanpur vide Annexure "5". Permission was duly granted to respondent No. 4 for the construction of the godown and it was noticed in that letter that storage of L. P. G. Cylinders in the godown should strictly conform to the conditions mentioned in this office Order No. 3 (34)-1 dated 10-3-1964."

Under Rule 84 (3) of the Explosives Rules, referred to above, every application for the grant of a licence of explosives shall be in Form C, and shall be accompanied by a plan in duplicate, drawn to scale. Unfortunately the letter dated 29th April, 1975 sent by respondent No. 4 has not been filed before this Court, but there can be no doubt that this letter was accompanied by a copy of the plan of the godown. Assuming this letter did not make a specific prayer for the grant of licence yet by implication it can be inferred that the letter which was sent accompanied by the plan was to seek the requisite licence under Rule 84 (3) of the Explosives Rules. Since in every respect there has been a compliance of the law, I am of the opinion that this is not a fit case in which I should interfere with the impugned order passed by the authorities concerned permitting the storage and sale of the gas cylinders to respondent No. 4.

11. There is yet another strong reason for not interfering with the impugned order as prayed for in this writ petition. I have mentioned above that Ram Krishna Ramaini is also one of the residents of the houses situate in the Bagicha in question. He claims to be the Pujari of the Mandir situate in the Bagicha. He filed Suit No. 236 of 1975 in the court of the IInd Civil Judge, Kanpur against respondent No. 4 Srimati Rabia Begum. On 17th May, 1975, an ex parte injunction order was obtained restraining the construction of the godown in question. This interim order was vacated on 2nd June, 1975. Thereafter Suit No. 764 of 1975 was filed by Dr. M. G. Mangalani father of the petitioner and also by Ram Krishna Ramaini and others, in the court- of the Munsif City, Kanpur. In this suit also an interim order was obtained on 3rd July, 1975, but after hearing the parties this ex parte order was vacated on 7th August, 1975. Both these suits are pending in the court below. It also appears that Dr. V. Mangalani, the elder brother of the petitioner sent a report to the City Magistrate, Kanpur alleging that the factory of the petitioner was being constructed in unauthorised manner without getting any plan approved.

The City Magistrate served respondent No. 4 with a notice for demolition of the

construction but after spot verification no further action was taken by the City Magistrate. It appears from Annexure D-7 that Dr. M. G. Mangalani, father of the petitioner also filed a complaint before the enquiry, this report was not proceeded with. From the narration of the above facts there can be no doubt, in my mind that the petitioner, his father, his brother and his neighbour Ram Krishna Ragaini are all out to harass this poor widow by taking resort to frivolous and vexatious litigation. Having failed in all their attempts to finally secure an injunction order restraining the construction of the godown of the petitioner, they have not even spared this Court in their attempt to injure Srimati Rabia Begam. The petitioner is thus trying to play a double game by approaching the civil courts as well as the High Court in an attempt to secure order adverse to respondent No. 4. In these circumstances, I am of the opinion that it would be extremely unfair if I interfere in the exercise of my writ jurisdiction with the impugned orders of the authorities concerned.

12. For the reasons given above, I do not find any force in this writ petition which is hereby dismissed with costs.