

(2011) 08 KL CK 0134

In the High Court Of Kerala

Case No : Writ Petition (C) No. 32334 of 2010

James Joseph

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 26-08-2011

Acts Referred:

Explosives Rules, 2008 — Rule 121, 139, 2(46), 83

Citation : (2011) 4 KLT 113

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : U. Balagangadharan, for the Appellant; T.P.M. Ibrahim Khan and P. Parameswaran Nair and C.G.S.C. T. Sanjay, for the Respondent

Judgement

Antony Dominic

1. Challenge in the Writ Petition is against Exts. P4 and P6.
2. Exts. P1 and P2 show that from 1979 onwards, the petitioner was licenced to store safety fuse and gunpowder. As the licence period was expiring on 31.3.2010, the petitioner applied for its renewal by submitting Ext. P3, which was rejected by Ext. P4 order, on the ground that the Explosives Rules, 2008 did not permit the sale of gunpowder and safety fuse from a shop. Aggrieved by Ext. P4, petitioner filed Ext. P5 appeal before the first respondent invoking the appellate power under R. 121 of the Explosives Rules, 2008. The appeal was also rejected by Ext. P6 order, reiterating the ground mentioned in Ext. P4. It is in these circumstances, challenging Exts. P4 and P6, this Writ Petition is filed.
3. Counsel for the petitioner submitted that he was doing business only in safety fuse and relied on R.83 and Schedule IV of the Explosives Rules, 2008 to substantiate his contentions. Counter-affidavit has been filed by the respondents and in paragraph of the counter affidavit, it is stated thus:

There existed an anomaly in the Explosives Rules, 1983 itself wherein upto 25 kgs. of gunpowder and 10,000 mtrs. of safety fuse is allowed to be stored for

sale in a shop located by the side of public road surrounded by commercial establishments while, as per condition No. 1 of licence in Form 23, gunpowder not exceeding 5 kgs. and safety fuse not exceeding 50 mtrs shall be stored in a substantial building constructed of non-flammable material or any fire box separated from any dwelling house or another building, highway, street, thoroughfare or public place by a distance of minimum 45 m. This anomaly has been removed by deleting the provision for sale of safety fuse and gunpowder from a shop from the "Purpose for which licence is granted" under Schedule IV to Explosives Rules, 2008. Gunpowder as a blasting material has been discontinued from use in quarries, well sinking, road construction purposes etc. Safety Fuse along with Ordinary Detonator and Ammonium Nitrate Fuel Oil Mixture, is widely used in blasting operation in quarries unauthorisedly. Ammonium Nitrate not being explosives by itself, a licence under explosives rules, is not mandatory for possession and sale. This gradually changed the shops licensed for possession and sale of gunpowder and safety fuse, to illegal outlets for sale of ordinary detonators (Class 6 Dvn. 3 explosives) along with Safety Fuse and Ammonium Nitrate. The changing law and order scenario necessitated restriction on easy availability of explosives from a shop. The monitory mechanism provided under Explosives Rules, 2008 are distinctly different for sale of explosives (fireworks) from a shop licensed in Form LE-5 and sale of explosives from a magazine licensed in Form LE-3. The Explosives Rules provide for stringent monitoring of sale of explosives from a magazine. The new Explosives Rules, 2008 provide for sale of gunpowder and safety fuse only from a magazine licensed in Form LE-3.

4. Thus, the stand of the respondents is that there is no provision under the Explosive Rules, 2008 for grant of licence for sale of safety fuse from a shop. R.2(46) of the Rules defines safety fuse as follows:

2(46) "Safety fuse" means a fuse for igniting charges of other explosives which burn and does not explode and which does not contain its own means of ignition, and which is of such strength and construction and contains an explosives in such quantity that the burning of such fuse would not communicate laterally with other like fuse.

5. Rule 99 of the rules provides that licences and certificates for specific purposes may be granted by the authorities specified in Part I of Schedule IV. A perusal of Schedule IV shows that safety fuse not exceeding 50 metres can be licenced to be possessed in a store house. Similarly, C1.5(d) also shows that safety fuse not exceeding 50 metres can be licenced to be possessed for sale in States including Kerala. Statutory provisions governing grant of licence being as above, it cannot be disputed that there is no provision in Schedule IV enabling possession of safety fuse beyond 50 metres for sale from a shop. Necessarily therefore, the contention of the respondents that with the introduction of Explosives Rules, 2008, there is no provision for granting licence for possession and sale of safety fuse and gunpowder from a shop except in the manner as provided in the Schedule IV has to be accepted. If so, the reasoning contained in Exts. P4 and P6

is unassailable.

6. Counsel for the petitioner relied on R. 139 of the rules and contended that notwithstanding the introduction, of the 2008 Rules, the licences which are already granted before 2008 are liable to be continued. This Rule reads thus:

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.

7. In my understanding, this Rule only enables persons who also possessed the licences at the time of introduction of the Rules to continue business until the expiry of the licence period and it does not entitle any one to seek further continuance, contrary to the terms of the Rules. Therefore, this provision does not come to the rescue of the petitioner.

8. Insofar as R.83 relied on by the learned counsel for the petitioner is concerned, this Rule only provides that explosives, including gunpowder and safety fuse, will be permitted to be possessed and sold from a shop, provided the same is permitted by a licence. As already seen, the Schedule provides only for sale of safety fuse upto 50 metres and not 10,000 metres as was permitted in the case of the petitioner by Exts. P1 and P2. Therefore, even R.83 will not help the petitioner.

9. At this stage, counsel for the petitioner seeks a direction to the respondents to renew his licence in terms of C1.5(d) of Schedule IV. It is clarified that if the petitioner is desirous of obtaining such a licence, it will be open to the petitioner to make an application in which event, that will be dealt with in accordance with law and untrammelled by Exts. P4 or P6 orders.

Subject to the above, the Writ Petition is disposed of.