
(2014) 09 MAD CK 0319

In the Madras High Court

Case No : W.P.(MD). No. 10926 of 2014 and M.P.(MD). Nos. 2 and 3 2014

Jothi

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 19-09-2014

Acts Referred:

Citation : (2014) 09 MAD CK 0319

Hon'ble Judges : R. Mahadevan, J;M. Jaichandren, J

Bench : Division Bench

Judgement

M. Jaichandren, J.—Heard the learned counsel appearing on behalf of the petitioner, as well as the learned counsel appearing on behalf of the respondents.

2. This Writ Petition has been filed, as a Public Interest Litigation, praying that this Court may be pleased to issue a Writ of Certiorarified Mandamus to call for and quash the impugned orders, dated 27.11.2013 and 30.11.2013, issued by the fifth respondent and consequently, to direct the first, the second and the fourth respondents to promote the agricultural activities in Virudhunagar District, as a Rehabilitation Programme and for a further direction to the second respondent to conduct an enquiry into the conduct of the sixth respondent and to pass such further or other orders.

3. The petitioner has stated that a number of accidents had taken place in the area concerned due to the establishment of fire works factories, by various individuals. While so, the seventh and the eight respondents have proposed to construct fire works factories, in certain survey numbers, in Nadhikudi Village, Sivakasi Taluk, Virudhunagar District. The petitioner has further stated that the fifth respondent ought to follow Rules 102 and 103 of the Explosive Rules, 2008, for the grant of the licences for the establishment of the fireworks factories. The fifth respondent, who is the authority concerned to issue the licences for the establishment of the fire works factories, is bound to follow the provisions of Explosives Act, 1884, and the Explosive Rules, 2008. Rule 103(3) of the Explosive Rules, 2008, specifically requires the authority to verify the

antecedents of the applicant, the lawful possession of the site in question, the genuineness of the purpose and public interest, while issuing licences. However, the fifth respondent had granted the licence without considering the antecedents of the seventh respondent and also without following the mandatory procedures prescribed under the law. Further, the distance between the fire works factories, to be established by the seventh and the eight respondents, are within the prohibited distance, prescribed under Rule 86 of the Explosive Rules, 2008.

4. The petitioner has further stated that the grant of unlimited licences to various persons, to set up their fire works factories, have adversely affected the agricultural activities in the area concerned. The authorities concerned have not conducted a public enquiry, as provided under law. Further, the placing of the notice in the Notice Board at the Offices of the Revenue Divisional Officer and the Tahsildar concerned cannot be taken to be a proper publication. No personal hearing is given to those who have reasons to oppose the establishment of the fire works factories.

5. The petitioner has further stated that it is only the District Revenue Officer, who should conduct the enquiry. However, it has been learnt that the Revenue Divisional Officer had conducted the enquiry. The learned counsel appearing on behalf of the petitioner had relied on the following decisions of the Supreme Court to substantiate his contentions.

a) State of Madhya Pradesh and Another etc. Vs. Ram Ragubir Prasad Agarwal and Others, .

b) Adarsh Shiksha Mahavidyalaya and Others Vs. Subhash Rahangdale and Others, .

5.1. In Adarsh Shiksha Mahavidyalaya and Others Vs. Subhash Rahangdale and Others, , paragraph 59, it has been held as follows:-

59. Reference also deserves to be made to the judgment of the three-Judge Bench in Shivajirao Nilangekar Patil Vs. Dr Mahesh Madhav Gosavi and Others, , in which a new dimension was given to the power of the superior courts to make investigation into the issues of public importance even though the petitioner may have moved the Court for vindication of a private interest. In that case the High Court had entertained a Writ Petition filed by Assistant Medical Officer of K.E.M. Hospital, Bombay questioning the assessment of answer sheets of the Postgraduate Medical Examinations held by the Bombay University in October 1985. He alleged malpractices in the evaluation of the answer sheets of the daughter of the appellant who, at the relevant time, was the Chief Minister of the State. The learned Single Judge held that altering and tampering of the grade sheets was done by Dr. Rawal at the behest of the Chief Minister. The Division Bench affirmed the order of the learned Single Judge with some modification.

6. It has been further stated that, as per Rule 7 of the Explosive Rules, 2008, no person shall manufacture, import, export, transport, possess for sale or use an

explosive, except as authorised or licenced under these Rules. It has also been made clear, under Rule 115 of the said Rules, that a "No Objection Certificate", granted under Rule 103, may be cancelled by the authorities concerned, for the reasons stated therein. However, the authorities concerned had failed to comply with the requirements of the provisions of the Explosives Act, 1884, and the Explosive Rules, 2008.

7. The learned counsel appearing on behalf of the petitioner had further submitted that the District Collector, Virudhunagar District, has issued the proceedings, dated 25.05.2013, stating that there shall be no more granting of "No Objection Certificates" under Rules 102 and 103 of the Explosives Rules, 2008, to any person, to obtain Explosive Licences from the authorities of PESO and the District Magistrate/Additional District Magistrate for the grant of Fireworks/Explosives, within the jurisdiction of Sivakasi, Sattur and Virudhunagar Taluks, in Virudhunagar District.

8. The learned counsel appearing on behalf of the seventh respondent had submitted that the Writ Petition filed by the petitioner, stating that it has been filed as a Public Interest Litigation, ought to be dismissed, in limine. The petitioner has suppressed the material fact that the eight respondent is her father and that the "No Objection Certificate" granted in his favour had been cancelled, even before the filing of the Writ Petition. He had further submitted that the eight respondent had asked the seventh respondent to purchase his lands. On 30.11.2013, a "No Objection Certificate" for establishment of a fire works factory had been issued to the eight respondent. On 10.03.2014, the seventh respondent had purchased the lands belonging to the eight respondent and his sons. As such, it could be seen that the present Writ Petition has been filed with ulterior motives, in order to disrupt the smooth functioning of the fire works factory of the seventh respondent.

9. The learned counsel had relied on a judgment of the Supreme Court in Ashok Kumar Pandey Vs. The State of West Bengal and Others, , with regard to the maintainability of the Public Interest Litigation. In such circumstances, the present Writ Petition filed by the petitioner is liable to be dismissed, with exemplary costs.

10. The learned Special Government Pleader, appearing on behalf of the Official respondents had submitted that the District Revenue Officer is the authority concerned for the grant of a "No Objection Certificate", upto 15 Kilometres. He had further submitted that all the parameters prescribed in Rules 102 and 103 of the Explosive Rules, 2008, had been followed, by the authorities concerned. The antecedents and the other requirements to be fulfilled by the applicant had been verified, by the Revenue Divisional Officer and the Tahsildar concerned. The necessary police verification had also been made. The fire works department had also been asked to verify the requirements of safety for the establishment of the fire works factory. A public enquiry had also been conducted, as prescribed under Explosive Rules, 2008, after due publication. In such circumstances, the Writ

Petition filed by the petitioner is liable to be dismissed, as it is devoid of merits.

11. In view of the submissions made by the learned counsels appearing on behalf of the parties concerned and in view of the records available, we are of the considered view that the petitioner has not shown sufficient cause or reason to grant the relief, as prayed for by the petitioner, in the present Writ Petition. The petitioner has not been in a position to show, by way of evidence, that the granting of the licences, for the establishment of the fire works factories in the area in question, has caused many serious accidents in the recent past. Further, it is for the authorities concerned to take appropriate decisions, for the granting of licences, taking into consideration the relevant aspects relating to the safety and the well being of the people living in the area concerned. The claims raised on behalf of the petitioner that a licence has been granted to the seventh respondent, for the setting up of a fire works factory, is contrary to the provisions of the Explosives Act, 1884, and the Explosives Rules, 2008, is not sustainable in the eye of law.

12. It is noted, from the records available, that the authorities concerned had followed the procedures contemplated under Rules 102 and 103 of the Explosives Rules, 2008, while granting the licence in favour of the seventh respondent. A public enquiry had been held, after notices had been displayed on the Notice Boards of the Offices of the Revenue Divisional Officer and the Tahsildar concerned. The antecedents of the seventh respondent had also been verified before the licence had been issued in his favour.

13. It is also noted that the District Collector, Virudhunagar District, had issued the proceedings, dated 25.05.2013, stating that "No Objection Certificates", under Rules 102 and 103 of Explosives Rules, 2008, would not be granted to any person, to obtain Explosive licences for the manufacture of fire works and explosives, within the jurisdiction of Sattur and Virudhunagar Taluks, in Virudhunagar District. It is also noted that the District Collector, Virudhunagar District, had issued a note, dated 14.06.2013, clarifying the proceedings, dated 25.05.2013, stating that it would not be applicable to the applications received in the Collectorate, Virudhunagar District, for the grant of "No Objection Certificates", prior to 25.05.2013 and those that were under process upto the said date. It is also noted that the seventh respondent had made the application for the grant of a "No Objection Certificate" prior to 25.05.2013.

14. In such circumstances, we do not find any merit in the Writ Petition. Hence, the Writ Petition stands dismissed. Consequently, the connected miscellaneous petitions are closed. No costs.