

(2016) 06 KL CK 0089
In the High Court Of Kerala
Case No : W.P. (C) . No. 1794 of 2016 (Y)

Joy Joseph

APPELLANT

Vs

The District Collector, Collectorate, Kannur

RESPONDENT

Date of Decision : 28-06-2016

Acts Referred:

Citation : (2016) 3 ILRKerala 740 : (2016) 3 KerLJ 424 : (2016) 3 KLT 514

Hon'ble Judges : Mr. P.B. Suresh Kumar, J.

Bench : Single Bench

Advocate : Dr. K.P. Satheesan, (Sr.) Sri. P. Mohandas (Ernakulam), Sri. Anoop. V. Nair, Sri. S. Vibheeshanan and Sri. K. Sudhinkumar, Advocates, for the Appellant; Sri. G. Gopakumar, Government Pleader, Sri. M. Sasindran, Advocate, for the Respondent

Final Decision : Allowed

Judgement

P.B. Suresh Kumar, J.—Ext. P11 order is under challenge in this writ petition.

2. The petitioner proposes to establish a quarry. Licence in Form LE-3 of the Explosives Rules is required for operating an explosive magazine at the site of the quarry. Rule 103(1) of the Explosives Rules, 2008 ("the Rules" for short), provides that the applicant desiring to obtain a licence of the said nature shall apply to the District Magistrate with copies of the site plan showing the location of the premises proposed to be licensed for issue of a certificate to the effect that there is no objection to the applicant receiving licence for the site proposed. In the light of the said provision, the petitioner has submitted an application to the second respondent, the jurisdictional District Magistrate for a "No Objection Certificate" (NOC) with all the requisite documents. The application submitted by the petitioner was rejected by the second respondent as per Ext. P3 order on the ground that the local panchayat raised objections to the grant of NOC. The petitioner challenged Ext. P3 order before this Court in W.P.(C) No.23010 of 2015 and this Court disposed of the said writ petition directing respondents 1 and 2 to

take a fresh decision in the matter, after conducting necessary enquiry. Ext. P10 is the judgment in the said case. Pursuant to Ext. P10 judgment, the second respondent inspected the site of the quarry. In the meanwhile, the second respondent received a few complaints from the local public against the grant of NOC to the petitioner. The grievance highlighted in the complaints was mainly that the quarrying operations would result in environmental issues like landslide and that the same would cause threat to their life and property. A letter was also issued by the local Grama panchayat to second respondent raising objections to the grant of NOC to the petitioner. In view of the objections, the second respondent heard the objectors and passed Ext. P11 order rejecting the application submitted by the petitioner for NOC, holding that the local public have strongly objected to the grant of NOC. It was also held by the second respondent in the order that the local Grama panchayat also expressed strong resentment to the grant of NOC. The petitioner is aggrieved by Ext. P11 order.

3. Heard the learned Senior Counsel for the petitioner as also the learned Government Pleader.

4. Exhibit P11 recites that when the second respondent inspected the site of the quarry, he could not find any objectionable elements. The relevant portion of Ext. P11 reads thus :

"Consequently, the undersigned inspected the site for the proposed magazine and found no objectionable elements."

Nevertheless, it is seen that the NOC sought by the petitioner was rejected on the sole ground that the local panchayat and the local people have raised objections to the grant of NOC.

5. Rule 103(3) of the Rules deals with the procedure to be followed by the District Magistrate for grant of NOC applied for under Rule 103(1) of the Rules. Rule 103(3)(a) of the Rules reads thus :

"103. Procedure to be observed for issue of no objection certificate and for grant of licence :

x x x x x x x

x x x x x x x

(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."

The said Rule mandates that the District Magistrate shall verify the interest of the public while considering the applications for NOC. Clause (a) of Rule 103(3) of the Rules prescribes the manner in which the District Magistrate has to verify the interest of the public. The said clause provides that 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 prescribed time and if any objection is received pursuant to the said notice, the objector shall be heard and the justification for such objection shall be assessed, after making such enquiry as he deems necessary. It is thus evident that when objection is raised to the grant of NOC, the District Magistrate shall go into the reasons on the basis of which the objection is raised and arrive at a conclusion as to the justifiability of the objection, after making necessary enquiries, and NOC sought can be rejected only if it is found that there are justifiable reasons for raising objections against the grant. It is with a view to enable the District Magistrate to examine the justifiability of the objection, the Rule insists the objectors to give reasons in support of their objections. In other words, the application for grant of NOC cannot be rejected merely for the reason that there are objections against the grant.

6. As far as the present case is concerned, it is stated by the District Magistrate that he did not find any objectionable elements at the time of local inspection. But, there is nothing on record to indicate that the District Magistrate has followed the procedure prescribed under Rule 103(3) of the Act for verifying the interest of the public. The impugned order indicates that the NOC sought by the petitioner was rejected solely for the reason that the local public have raised objections to the grant. The District Magistrate has not considered the

justifiability of the objections as required by the Rules. In the circumstances, the impugned order is liable to be interfered with.

7. In the result, Ext. P11 is quashed and the second respondent is directed to consider the justifiability of the objections raised to the grant of NOC applied for by the petitioner, after following the procedure prescribed under Rule 103 (3) of the Rules, afresh. This shall be done within six weeks from the date of receipt of a copy of this judgement. Needless to say that if the District Magistrate does not find any justification for the objections raised to the grant of NOC, the NOC applied for by the petitioner shall be granted.

8. The writ petition is allowed as above.