
(2013) 09 DEL CK 0488

In the Delhi High Court

Case No : Writ Petition (C) 599 of 1999

Mahender Kumar and Another

APPELLANT

Vs

Commissioner of Police and Others

RESPONDENT

Date of Decision : 11-09-2013

Acts Referred:

Citation : (2013) 9 AD 187

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Hameed S. Shaikh, for the Appellant;

Final Decision : Dismissed

Judgement

V.K. Jain, J.—The petitioner No. 1 has been running a shop in Regharpura, Karol Bagh. On 16.10.1998, the son of the petitioners died allegedly due to fire in fire crackers shop at corner of street No. 23, Regharpura, Karol Bagh. The licences for the said cracker shop were issued by respondent No. 1-Commissioner of Police, Delhi. According to the petitioners, Regharpura, being a congested area having various small shops, selling products such as cotton, mattresses, paints, eatables, etc. licence ought not to have been given in the said locality. It is also alleged that while granting licence to respondent No. 5 and 6, respondent No. 1 did not adhere to the prescribed norms, rules and regulations. It is also alleged that respondent Nos. 7 and 8 (as per original memo of parties) committed various violations, while selling crackers in their respective shops. The petitioners are accordingly seeking compensation, amounting to Rs. 20 lakh, besides a judicial enquiry in the above-referred incident. In his counter-affidavit, respondent No. 1-Commissioner of Police has stated that on 16.10.1998, fire crackers stall No. 3861/23, Regharpura caught fire and Master Rohit was removed from his shop, after breaking the shutter of his shop, by the fire services personnel. It is also claimed that respondent Nos. 7 and 8 were granted temporary licence for selling crackers on the eve of Diwali, after taking required precautions and Master Rohit was sitting inside the shop, shutter of which had

been locked from inside and, therefore, got trapped in the shop.

2. In his counter-affidavit, respondent Rohtash, who died during the pendency of the writ petition, denied the allegations made in the writ petition and claimed that in fact the fire had started in the building in which the shop of the petitioner was located. According to him, his shop is situated across the road though it also engulfed his shop which is situated in a building across the road. He claimed that petitioner No. 1 rushed out of the shop when the building caught fire and while doing so, he downed the shutter of the shop, leaving his son Rohit inside. It is also claimed in the reply of the said respondent that all safety precautions had been taken by him though the cracker shops situated in the building in which the shop of the petitioner is situated were flouting the prescribed norms.

3. As far as respondent Rohtash Gupta is concerned, he having died during the pendency of the writ petition and his legal representatives having not been brought on record, the writ petition stood abated qua him. In any case, since respondent No. 4 is not a State within the meaning of Section 12 of the Constitution nor was he performing any public duty as to bring him within the purview of the said Article, no writ petition against him is maintainable. In any case, since the allegations made against respondent No. 4 were denied in the counter-affidavit filed by him and no enquiries into the disputed question of facts can be undertaken in a writ petition, no relief to the petitioner could have been granted by the Writ Court, against him. The other private respondent was deleted from the array of respondents.

4. As regards award of compensation against respondent No. 1, I find that no negligence on the part of Delhi Police has been substantiated by the petitioner. The following are the salient features of the instructions, issued by Delhi Police on 22.02.1998 for grant of licence for the said of fireworks on the eve of Dussehra and Diwali:-

7. On receipt of application, SHO concerned will be asked to conduct the physical inspection of the shop to see whether the place/premises is suitable and safe for the sale of fireworks.

Pucca Shop

2. The premises should have a floor area of minimum 9 square metres and will be of a distance of 15 metres from each other of shop selling inflammable products. However, in view of the judgment of the Hon'ble Supreme Court in SLP No. 12327-28/93 dated 15.10.93 regarding grant of temporary cracker licences for the shops in Jama Masjid and Sadar Bazar area, temporary licences are not denied on the ground that cracker shops are adjacent to the shops in respect of which licence is sought wherein any other inflammable/combustible material is being sold that may be a factor which may weigh with the authority.

3. Such premises shall not be situated under a staircase and shall be so located as not to obstruct any passage in, from or to the building in case of fire or

accident.

4. The premises shall be situated at ground level.
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4. The premises shall be situated at Ground level.
5. Such premises should not be situated adjacent to shops in which inflammable or highly combustible products are sold.
6. The premises/shops/sheds in which such licences are to be granted should be strictly prohibited from selling other items/articles.
7. The premises should be such where the reach of the Fire Brigade and the Hose Pipe is possible and it should be on a main thoroughfare.
8. There should be no loose wiring in the premises. No all lamps/gas lamps or naked light shall be used.
9. Shops should have independent entry/exit.
10. No sale of fireworks will be allowed on footpath/pavements.
11. Explosives should not be hawked, sold or exposed for sale upon any highway, street, public thoroughfare or public place.

TEMPORARY SHEDS IN OPEN AREAS

5. No oil, burning lamps, gas lamps or naked light shall be used in the shed or within the safety distance of the sheds for the purpose of lighting

SAFETY MEASURES

Following safety consideration must be provided.

1. At least 4 sand bags must be kept in the premises. Additional sand bags depending upon the size of the premises are also required to be kept.
2. Two buckets full of water should be kept in the premises. But if the size of the premises is larger than the required one, one or two more buckets full of water are also required to be kept.
3. "No Smoking" board should be displayed in each licensed premises.
4. One or more fire extinguishers of water CO2 type capacity 9 ltrs. Each ISI mark, depending upon the size of the premises must be kept in the shop, but the floor area should not be less than 2 sq. metres in any case.
5. The use of crackers and smoking should not be allowed near the sale are i.e. 50 mtrs. away from the shop

6. (iii) All shops selling fireworks should have (a) fire extinguishers (b) sand in buckets (c) enough and readily available buckets of water.

SAFETY PRECAUTIONS TO BE TAKEN BY DISTT. DCsP

2. An enforcement staff should be constituted at District level to supervise checks in a bid to ensure compliance of the mandatory provisions/requirements.

3. DCsP/Licensing and vigilance will depute their staff to carry out surprise checks in various localities to ensure that the conditions of the licence are being followed by the individual licence holder meticulously and that no unauthorized person sells fireworks in any area. Wherever conditions are not met, the licence is to be cancelled and action against the person responsible for issue of such temporary licence shall be taken.

5. Though it is alleged in the writ petition that respondent No. 1 had not taken necessary precautions before allowing Rohtash Gupta and Pradeep Sharma to run explosive stalls, no specific breach of the Circular dated 22.09.1998 has been pointed out in the writ petition. It was for the petitioners to substantiate the alleged contraventions on the part of respondent No. 1 before damages on account of the death of their son can be claimed from him or from the Government. However, the material on record does not substantiate any violation of the Circular dated 22.09.1998 on the part of any officer of Delhi Police. There is no material to show that i) the explosive materials were not kept in a closed brick stone or concrete building; ii) the premises in respect of which licence was granted did not have a floor area of minimum 9 square metre or; iii) the distance between the shops selling fire crackers was less than 15 metres. In any case, the circular itself shows that Hon'ble Supreme Court held in SLP No. 1732728/93 that the cracker licence could not be refused on the ground that the shops on the ground floor selling crackers or two shops in which inflammable/combustible material was sold were adjacent to each other. The decision, despite having been rendered in respect of shops in Jama Masjid and Sadar Bazar area would equally apply to Karol Bagh area. There is nothing to show that i) that the premises where licence was granted was situated under a staircase; ii) was not situated on ground floor; (iii) was selling articles other than crackers; iv) was situated at a place which was not within the reach of fire brigade; v) any loose wire was hanging in the premises; vi) any lamp/gas lamp or naked light was being used there or vii) the shop did not have any independent/exit.

6. It was contended by the learned counsel for the petitioner that there is nearby place where eatables are sold and gas cylinders are used in the said eating shops and, therefore, no licence should have been granted. In this regard, he placed reliance upon clause 5 of the circular to the extent it applies to temporary sheds in open areas. The said clause prohibits oil, burning lamp, gas lamp or naked light in the shed or within the safety distance of the sheds for the purpose of lighting. The said stipulation does not prohibit grant of licence in a case where an eating house is situated near the place in respect of which the licence is granted.

There is no material on record to show that respondent Rohtash had not taken the safety measures, stipulated in the circular and the said fact was in the knowledge of Delhi Police. According to Mr. Rohtash Gupta, he had complied with all the requirements and had kept at least four sand bags and two bucket full of water in the premises, had displayed "No Smoking Zone" and also kept fire extinguisher in his shop. This is also not the case of the petitioner that the concerned Deputy Commissioner of Police had not constituted an enforcement staff for supervising the fire cracker stalls/shops and staff was not deputed to carry out surprise check in the locality.

7. In these circumstances, when the petitioners have not been able to make out any negligence or breach of a statutory duty on the part of any official of Delhi Police, no compensation against respondent No. 1 or against the Government can be awarded.

8. The following are the violations, which the petitioners attributed to deceased Rohtash Gupta and one Pradeep Sharma whose name was later deleted from the array of respondents:-

(i) That the respondents no. 7 and 8 had stored more than licensed stocks of fire crackers/goods and did not maintain the record.

(ii) That the premises in question had been located in a building where on the first floor itself highly inflammable products had been lying and also full of cotton being a cotton godown.

(iii) That the said respondents were also carrying on the sale of cotton from the cotton godown.

(iv) No sand bags were kept in the premises although minimum requirement of four sand bags was there.

(v) No buckets full of water were kept in the premises.

(vi) No fire extinguisher of water CO2 type capacity 9 litres such ISI mark were kept in the premises.

(vii) D.V.B. officials also did not check overhanging electricity wires for ruling out the possibility of any short circuit.

(viii) That no dry run was organized of a fire fighting exercise.

(ix) That the respondent nos. 7 and 8 were not even trained in fire fighting exercise.

(x) That within fifteen metres of the premises there had been shops having inflammable material. There is a restaurant in the immediate vicinity of the shop where eatables like Pakhoras and Samosas are being prepared and sold.

(xi) That the respondents have acted in clear violation of the directions given by the Hon"ble Supreme Court in SLP No. 17327-28/1993 dt. 15.10.93 and

directions of the Hon"ble High Court in CM No. 3364 and 4381/92.

(xii) That weights, balance, tools made of iron or steel had been kept in the premises and even on the first floor thereof which was used as a godown also for keeping crackers as well as cotton, mats and cloth etc.

(xiii) That explosives were not even kept in bags, containers or cases to prevent any explosion from escaping nor they were parked or marked in accordance with requirement of Rule 8 and 9 of the Explosives Rules, 1983.

(xiv) Respondent no. 7 and 8 had kept numerous stock and had not even kept the records and accounts of the same.

However, all these allegations were denied in the counter-affidavit of Shri Rohtash Gupta. As noted earlier, disputed question of facts cannot be enquired into in a writ petition. Therefore, this Court is not in a position to return a finding as to whether the said respondents had actually committed the violations imputed to them in the writ petition or not. These are the matters which require recording of evidence and such an exercise can be undertaken only by a Civil Court.

For the reasons stated hereinabove, the writ petition is dismissed. There shall be no order as to costs.