

(2007) 07 MP CK 0113
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3591 of 2004

Mamta Shah

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 05-07-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Explosives Act, 1884 — Section 18, 5, 6B, 6C, 6C(1)(c)

Citation : (2007) ILR (MP) 1105 : (2007) 4 MPLJ 321 : (2009) 5 RCR(Civil) 512 : (2008) 1 RCR(Criminal) 755

Hon'ble Judges : A.K. Patnaik, C.J.;Ajit Singh, J

Bench : Division Bench

Advocate : Aditya Sanghi, for the Appellant; Vivekanand Awasthy, Govt. Advocate for Respondent Nos. 1, 2 and 4, Jayant Neekhra for Respondent No. 3 and J.K. Pillai, for the Respondent

Judgement

A.K. Patnaik, C.J.

The petitioner is a teacher of Management subjects. She has filed this writ petition under Article 226 of the Constitution of India as a Public Interest Litigation alleging that school vans and ambulances, run by private hospitals, are using LPG cylinders, which are meant to be used for domestic cooking and the godowns of LPG cylinders are situated near schools at different places in the State of Madhya Pradesh. She has stated in the writ petition that the authorities are not taking steps to check the use of LPG cylinders in motor vehicles and to ensure that the LPG godowns are situated at safe distances from the schools.

After hearing Mr. Aditya Sanghi, learned counsel for the petitioner, Mr. Jayant Neekhra for the Union of India, Mr. J. K. Pillai for the Indian Oil Corporation and Mr. Vivekanand Awasthy, learned Government Advocate for the State of Madhya Pradesh, we find that the use and storage of LPG cylinders is regulated by the Explosives Act, 1884 (in short "the Act") and the Gas Cylinder Rules, 1994 made by the Central Government u/s 18 of the Act. We further find that extensive

powers have been vested u/s 7 of the Act on officers to be specified by the Central Government in the Rules to be made under the Act. We also find that Rule 71 of the Gas Cylinder Rules, 2004, (for short "the Rules") provides that any of the officers specified therein can exercise the powers specified in sub-section (1) of section 7 of the Act and all District Magistrate of their respective districts and all Magistrates, subordinate to District Magistrates, in their respective jurisdictions are empowered under Rule 71 of the Rules to exercise the powers u/s 7 of the Act. We accordingly direct that the District Magistrates of all the districts of the State of Madhya Pradesh as well as the Magistrates, subordinate to the District Magistrates in their respective jurisdiction, will exercise powers as conferred on them u/s 7 of the Act so as to ensure that LPG cylinders are not used in vehicles contrary to the provisions of the Act and the Rules made thereunder. Actions taken by the Magistrates subordinate to the District Magistrates, in this regard will be intimated to the District Magistrates of their districts and the District Magistrates of the districts will file affidavits of compliance both by them and their subordinate Magistrates within two months from the date of receipt of the copy of this order from the Registry of this Court.

On 16-11-2005, after hearing the learned counsel for the parties, we had directed that the District Magistrates in whose jurisdiction the cities of Jabalpur, Bhopal, Indore, Gwalior, Rewa, Sagar, Satna, Damoh, Katni, Hoshangabad, Khandwa and Chhatarpur are located, will file affidavits after making necessary enquiries about the location of LPG depots/godowns vis-a-vis the schools and pursuant to the said order, the aforesaid District Magistrates have filed their respective affidavits with annexures indicating therein the location of LPG depots/godowns vis-a-vis the schools.

Section 6B of the Act provides for grant of licences under the rules made by the Central Government u/s 5 of the Act inter alia for possession and sale of explosives or any specified class of explosives. Section 6C of the Act provides that, notwithstanding anything contained in section 6B, the licensing authority can refuse to grant a licence where the licensing authority deems it necessary for the security of the public peace or for public safety to refuse to grant such licence [See section 6C(1)(c)]. Section 6C further provides that the licensing authority may, by order in writing, suspend a licence for such period or revoke a licence if the licensing authority deems it necessary for the security of the public peace or for public safety to suspend or revoke the licence [See section 6E(3)(b)]. Thus, even in a case where a licenced depot, in which LPG cylinders are kept, is located beyond the distances mentioned in the Rules and the licence conditions mentioned in the forms appended to the Rules the licensing authority, if he deems it necessary for public safety, refuse to renew the licence or to suspend or revoke the licence under the provisions of sections 6C and 6E of the Act. In other words, public safety will be the overriding consideration for the licensing authority and not the distances, as mentioned in the Rules or the conditions of licence in the forms appended to the Rules. Therefore, if the licensing authority finds that the location of a LPG Cylinder Depot or Godown is

too near a school so as to affect the safety of the school children, he is empowered to refuse to renew the licence or suspend or revoke the licence to such LPG Depots/Godowns, even though such Depots/Godowns are located beyond the distances mentioned in the Rules and the conditions of licence in the forms appended to the Rules.

Since, the District Magistrates pursuant to directions of this Court have filed their affidavits along with annexures indicating therein the distances of LPG Cylinders Depots and Godowns from the schools, the Chief Controller of Explosives, Government of India, who is the licensing authority under the Rules, will now apply his mind to the affidavits and annexures to the affidavits filed by the District Magistrates and decide the LPG Cylinders Depots and Godowns in respect of which the licences have to be suspended, cancelled or not renewed. We accordingly direct the Registry of this Court to send a copy of this order and the copies of the affidavits with annexures filed by the District Magistrates to the Chief Controller of Explosives, Government of India to comply the aforesaid direction. It is needless to say that the Chief Controller of Explosives, Government of India, will follow the relevant provisions of the Act and the Rules while taking the decision.

The writ petition is disposed of with the aforesaid directions. The compliance report will be filed by the Chief Controller of Explosives, Government of India, as well as the District Magistrates, as directed, within two months from the receipt of the copy of the order of this Court and the affidavits with annexures from the Registry.

Certified copy as per rules.