

(2016) 05 PAT CK 0104

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5146 of 2016

Md. Sawood Alam

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 18-05-2016

Acts Referred:

Explosives Rules, 2008 — Rule 118(I)(II)

Citation : (2017) 169 AIC 369 : (2016) 3 PLJR 817

Hon'ble Judges : Mr. Kishore Kumar Mandal, J.

Bench : Single Bench

Advocate : Mr. Y.C. Verma, Senior Advocate, for the Petitioner; Mr. S.D. Sanjay, ASG and Mr. Ravinder Kumar Sharma CGC, for the Union of India; Mr. G.P. Ojha, GP-22, for the State

Final Decision : Disposed Off

Judgement

Mr. Kishore Kumar Mandal, J.(Oral)—The petitioner represents a Firm in the name and style of M/S R.S. Enterprises (occupier Md. Sawood Alam) has filed this writ application to challenge the order contained in memo No. 184 dated 02.02.2016 passed by the District Magistrate, Sheikhpura withdrawing the no objection certificate (NOC) granted earlier to the Firm recommended for cancellation of his licence to deal in explosive issued under the Explosive Rules, 2008 (for short "the Rules"). During pendency of this application, the licensing authority being the Chief Controller of Explosive vide order dated 3rd March, 2016 (Annexure-8 to the Interlocutory Application) consequent upon withdrawal of the NOC by the respondent-District Magistrate declared that the licence issued to the petitioner Firm under Rule 118 (1)(II) of the Rules stands cancelled. The petitioner, by filing the aforesaid Interlocutory Application, has also challenged the said order.

2. The writ petition asserts that on grant of NOC to deal in explosives the petitioner obtained the licence in the name of the Firm and started the business. The NOC initially was granted by the District Magistrate on 16.01.2002 upon

which licence no. E/HQ/B1/22/35 licence/E63274 was issued which enabled the petitioner to carry on the business in accord with the terms of the licence and the provisions of the Act and the Rules framed thereunder. It is further stated that M/ S R.S. Enterprises was a partnership Firm and the petitioner was the Managing Partner of the said firm but on 20.4.2010, the two other partners , namely, Md. Shahid Alam and Md. Wahid Alam left the Firm and he became the sole owner of the Firm. In these circumstances, he applied for renewal in the name of M/S R.S. Enterprises, which was granted to the petitioner as the Occupant of the said Firm. Unfortunately, Sheikhpura P.S. case no. 267 of 2009 was registered on 18.08.2009 under the penal provisions of the Explosive Substance Act against the petitioner in which the petitioner and other accused persons have been granted bail. It appears, at the instance of persons inimical to the petitioner, the matter was reported to the Government where after the Sub Divisional Officer issued letter to the petitioner to produce relevant papers. Subsequently, the District Magistrate also issued notice in response whereof he filed his show cause/ reply where after the respondent District Magistrate vide order dated 02.02.2016 withdrew the NOC and recommended for cancellation of the licence. It is stated in doing so, no personal hearing was given to him. On the basis of the withdrawal of the NOC by the District Magistrate the licensing authority subsequently cancelled the licence vide order dated 3rd March, 2016 (Annexure-8) . Both the orders are under challenge.

3. Heard Mr. Y.C. Verma in support of the writ petition and Mr. S.D. Sanjay, Additional Solicitor General for the Union of India and its Officers as well as the Counsel for the State.

4. It has been submitted on behalf of the petitioner before withdrawing the NOC under the impugned order dated 02.02.2016, no opportunity of hearing was granted to him. The Rule provisions provide taking such action under Rule 103 of the Rules only when the proprietor or the occupier is convicted of a criminal charge and not merely on the basis of filing of the criminal case. There are provisions for transfer of licence as also change of partners or directors or members or occupiers. Before suspension/revocation or cancellation of licence the licensing authority was required to give an opportunity of hearing by issuing notice as provided in proviso to Rule 118 (1) of the Rules. The same has not been done. Both the orders are, therefore, bad in law and merit to be interfered with.

5. The Additional Solicitor General, on the other hand, has submitted that the District Magistrate is required to proceed in the matter in terms of Rule 103. Under sub-rule (3) thereof, the District Magistrate is enjoined to make verification of the antecedents of the applicant besides verification of other ancillary factors which include interest of public in general. It is not correct to say that only in case of conviction, the District Magistrate is required to act under Rule 103 of the Rules. It also appears that all relevant facts with regard to the change in the constitution of the Firm was/were not placed before the District

Magistrate and the licence was obtained/renewed without fresh NOC after the change in the ownership of the Firm (the licensee). He also submits that a statutory remedy is available to the petitioner in filing appeal against such withdrawal of NOC under Rule 115(3) of the Rules.

6. I have heard the parties and perused the materials on record. For better appreciation of the case, this Court would notice first the relevant Rule provisions. Rule 103 prescribes the procedure to be observed for issue of NOC and for grant of licence. Sub-rule (2) of Rule 103 empowers the District Magistrate to issue such NOC. Sub-Rule (3) of Rule 103 states so far as relevant provides as under :-

"103. (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. ????"

7. Rule 115 enables the authority to cancel the NOC. It provides as under:-

"115. Cancellation of no objection certificate- (1) No objection certificate granted under rule 103, may be cancelled by the authority issuing the same or authority superior to it, if such authority is satisfied, that-

(a) the licensee has ceased to have any right for the lawful possession over the licensed premises;

(b) the licensee is convicted and sentenced for any criminal offence or ordered to execute under Chapter VIII of the code of Criminal Procedure, 1973 (2 of 1974), a bond for keeping peace for good behaviour;

(c) The cancellation of no objection certificate is absolutely necessary for public peace and safety:

Provided that before cancellation of the no objection certificate, the licensee shall be given a reasonable opportunity of being heard.

(2)The authority issuing the no objection certificate or the District Magistrate or the State Government cancelling no objection certificate shall record, in writing, the reasons for such cancellation and shall immediately furnish to the licensee and the licensing authority concerned, copy of the order cancelling the no objection certificate and the reason for such cancellation.

(3) In case an appeal is made against the cancellation of no objection certificate, the appellate authority may consult, if so desired, the Chief Controller."

8. Rule 118 in so far as relevant for the purpose of the case provides as under:-

"118. Suspension and revocation or cancellation of licence.(i) Every licence granted under these rules shall-

(I) stand cancelled, if-

(a) the licensee has ceased to have any right for the lawful possession over the licensed premises:

(b) the licensee is convicted and sentenced under any criminal offences or ordered to execute under Chapter VIII of the Code of Criminal Procedure, 1973 (2 to 1974), a bond for keeping peace for good behaviour.

(II) stand cancelled, if the no-objection certificate is cancelled by the authority issuing the same or District Magistrate or the State Government in accordance with rule 115.

(III) be liable to be suspended or cancelled by an order of the licensing authority for any contravention of the Act or these rules or of any condition contained in such licence, or by order of the Central Government, if it is satisfied that there are sufficient grounds for doing so:

Provided that before suspending or cancelling a licence under this rule, the holder of the licence shall be given an opportunity of being heard?"

9. The petitioner submits that only in case of a conviction, the District Magistrate can withdraw the NOC. On the other hand, the respondent has submitted referring to Rule 103(3) that in grant of no objection certificate the District Magistrate is required to make verification of the antecedents of the applicant, lawful possession of the site, genuineness of the purpose as also interest of public. The impugned order records reasons for such withdrawal of the no objection certificate. The Court would not delve into those reasons as the counsel for the petitioner, in course of submission, has taken a stand that the petitioner shall file appeal there against before the appropriate authority/forum as provided under Rule 115(3).

10. The next question is whether the relief with respect to quashing of the consequential order dated 3rd March, 2016 (Annexure-8 to IA No. 2291 of 2016) should be granted to the petitioner or not and in case of non-grant thereof, the petitioner shall be put to a disadvantageous position. Looking to the provisions of Rule 118, it appears that under sub-rule (i) and (ii) thereof such cancellation/ revocation of licence is automatic whereas in other circumstances covered by sub-rule (3) of Rule 118, the licensing authority is empowered to exercise its discretion and in doing so, an opportunity of hearing is to be provided. It is, thus, apparent that in case the petitioner succeeds in the appeal and gets the NOC re-issued, he can apply afresh before the licensing authority for revocation of the order cancelling or suspending the licence issued to the petitioner.

11. The writ application and the pending Interlocutory Applications stand disposed of permitting the petitioner to file appeal against the withdrawal of NOC by the respondent-District Magistrate under order dated 02.02.2016 for expeditious disposal thereof by the appellate forum as the business of the petitioner is closed. There shall be no order as to costs.