

(2012) 08 KL CK 0203

In the High Court Of Kerala

Case No : Writ Petition (C) No. 7330 of 2012

M/s Ampadiyil Granites Vallicode

APPELLANT

Vs

District Collector Pathanamthitta-689645, Tahsildar
Kozhencherry Taluk, Pathanamthitta-689645 and Joint Chief
Controller of Explosives, South Circle, No. 140, Rukmini
Laxmipati Road, Egmore, Chennai-(Tamil Nadu)-680008

RESPONDENT

Date of Decision : 21-08-2012

Acts Referred:

Citation : (2012) 08 KL CK 0203

Hon'ble Judges : P.N. Ravindran, J

Bench : Single Bench

Advocate : Bechu Kurian Thomas, Sri. Paul Jacob P, Smt. Nisha John, Sri. Enoch David Simon Joel and Sri. S. Sreedev, for the Appellant; Viju Thomas Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

P.N. Ravindran, J.—The petitioner is a proprietary concern represented by its proprietor. The petitioner is running a quarry and metal crusher unit for the past several years with the necessary consent/license issued by various authorities including the local authority, the Kerala State Pollution Control Board and the Controller of Explosives. With a view to establish a magazine in the land where the petitioner is conducting the quarry, he submitted Ext.P5 application dated 10.11.2010 to the third respondent. The petitioner also simultaneously applied to the District Collector, Pathanamthitta for a No Objection Certificate under rule 102 of the Explosives Rules, 2008. The District Collector in turn forwarded the application to the Superintendent of Police, Pathanamthitta along with Ext.P6 letter dated 24.11.2010 requesting him to enquire and report whether there is any objection in granting the No Objection Certificate. After the application was submitted, the Divisional Officer, Fire and Rescue Services, Kottayam issued Ext.P7 No Objection Certificate dated 3.2.2011, certifying that the Fire and Rescue Services has no objection to the establishment of the magazine. The

Tahsildar, Kozhencherry submitted Ext.P8 report dated 25.11.2010 to the same effect. The District Collector thereafter considered the petitioner's application and rejected it by Ext.P10 order dated 24.12.2011. Aggrieved thereby, the petitioner filed W.P.(C)No. 259 of 2012 in this Court. By Ext.P11 judgment delivered on 31.1.2012, a learned single Judge of this Court set aside Ext.P10 order on the short ground that before it was issued, the petitioner was not put on notice or heard. This Court accordingly directed the first respondent to pass fresh orders, after affording the petitioner as well as respondents 3 and 4 an opportunity of being heard. The District Collector thereafter heard the parties and issued Ext.P12 order dated 3.3.2012, once again rejecting the application dated 10.11.2010 submitted by the petitioner for a No Objection Certificate under rule 102 of the Explosives Rules, 2008. Hence this writ petition challenging Ext.P12 and seeking the following reliefs:

- i. Issue a writ of certiorari or such other writ, direction or order quashing Ext.P12.
- ii. Issue a writ of mandamus or other appropriate writ, order or direction directing the 1st respondent to grant NOC for Magazine License in accordance with law.

The main contention raised by the petitioner is that the District Collector misdirected himself when he proceeded to hold that the petitioner did not produce the relevant documents before the Assistant Divisional Officer, Fire and Rescue Services, Pathanamthitta, that the Assistant Divisional Officer, Fire and Rescue Services, Pathanamthitta had in Ext.P13 letter dated 6.3.2012 informed the District Collector, Pathanamthitta that the reason for closing the petitioner's application was on account of the fact that the competent authority which could have considered the application for a No Objection Certificate to establish a magazine to store more than 500 kgs of explosives is the Divisional Officer, Fire and Rescue Services, Kottayam and therefore, the District Collector erred in proceeding on the basis that petitioner did not pursue his application for a No Objection Certificate before the Assistant Divisional Officer, Fire and Rescue Services, Pathanamthitta. Various other contentions are also raised in the writ petition.

2. The first respondent has sworn to a counter affidavit dated 7.7.2012. In paragraph 2 it is stated that the intention of the petitioner is to establish a magazine to quarry stone from poramboke land and ecologically fragile area. It is also stated that as per the direction issued from the first respondent's office on 14.6.2011, the Assistant Divisional Officer, Fire and Rescue Services, Pathanamthitta submitted a report dated 13.1.2012 stating that the applicant has not remitted the required fee for site inspection and has not produced the documents relating to the availability of land for keeping explosives and therefore, steps to issue a No Objection Certificate were cancelled. It is also stated that later on 6.3.2012 the Assistant Divisional Officer, Fire and Rescue Services, Pathanamthitta reported that a No Objection Certificate for establishing a magazine to store explosives exceeding 500 kgs is vested in the Divisional

Officer, Fire and Rescue Services, Kottayam. The deponent has also stated that the application submitted by the petitioner for a No Objection Certificate for establishing a magazine was rejected by him due to major local agitation in the area and if sanction is given, there will be chance for serious soil, water and air pollution and also possibilities for landslides. It is also alleged that the petitioner is doing quarrying operation in poramboke land and not in the land covered by the lease agreement. He has also stated that the petitioner's intention in establishing an explosive magazine is to double the work of his crusher unit. The deponent has also stated that the petitioner, who possesses an explosive license already has applied for a second one with a view to double the work of his crusher unit. I heard Sri. Bechu Kurian Thomas, learned counsel appearing for the petitioner and Sri.Viju Thomas, learned Government Pleader appearing for respondents 1 and 2. I have also gone through the pleadings and the materials on record. Ext.P12, the order impugned in the writ petition discloses that the District Collector, Pathanamthitta rejected the petitioner's application for a No Objection Certificate in terms of rule 102 of the Explosives Rules, 2008 mainly relying on the report of the Assistant Divisional Officer, Fire and Rescue Services, Pathanamthitta to the effect that the petitioner did not produce relevant documents and therefore, a No Objection Certificate was not issued by the said officer. It is evident from the pleadings and the materials on record that the petitioner had applied for establishing a magazine to store explosives in excess of 500 kgs. It is also not in dispute that the authority bound to issue a No Objection Certificate in respect of such a magazine is the Divisional Officer, Fire and Rescue Services, Kottayam. Ext.P7 discloses that the said officer had as a matter of fact issued such a No Objection Certificate on 3.2.2011. The District Collector was also alerted about this fact by the Assistant Divisional Officer, Fire and Rescue Services, Pathanamthitta when later, he sent Ext.P13 letter dated 6.3.2012. In that letter the Assistant Divisional Officer, Fire and Rescue Services, Pathanamthitta had informed the District Collector that the petitioner's application for a No Objection Certificate was closed in view of the fact that the competent authority to issue a No Objection Certificate is not he but the Divisional Officer, Fire and Rescue Services, Kottayam. From the materials on record and the reasons set out in Ext.P12 it is evident that the application submitted by the petitioner was rejected on an erroneous ground and without really noticing the fact that the competent authority who should have issued a No Objection Certificate is the Divisional Officer, Fire and Rescue Services, Kottayam and not the Assistant Divisional Officer, Fire and Rescue Services, Pathanamthitta. In such circumstances, notwithstanding the various contentions set out in the counter affidavit filed by the first respondent, I am of the opinion that the first respondent should reconsider the petitioner's application for a No Objection Certificate under rule 102 of the Explosives Rules, 2008, after following the procedure prescribed in rule 103 thereof.

I accordingly allow the writ petition, set aside Ext.P12 and direct the District Collector, Pathanamthitta to reconsider the application which was rejected by

Ext.P12 order after affording the petitioner an opportunity of being heard. Needful in the matter shall be done and revised orders passed expeditiously and in any event within an outer limit of one month from the date on which the petitioner produces a certified copy of this judgment before the District Collector.