

(2005) 12 KL CK 0058

In the High Court Of Kerala

Case No : Writ Petition (C) No. 32584 of 2004-D

P. Sasidharan @ Mani

APPELLANT

Vs

The Addl. District Magistrate and Others

RESPONDENT

Date of Decision : 14-12-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173
Explosives Act, 1884 — Section 6, 6E, 6F, 9(B)(1), 9B(1)
Penal Code, 1860 (IPC) — Section 286, 304

Citation : (2006) 3 ILR (Ker) 341 : (2006) 2 KLJ 701 : (2006) 4 KLT 662

Hon'ble Judges : A.K. Basheer, J

Bench : Single Bench

Advocate : K.V. Sohan and Sreeja Sohan K, for the Appellant; Waheeda Babu (GP), for the Respondent

Final Decision : Dismissed

Judgement

A.K. Basheer, J.—Are Exts. P2 and P3 orders passed by the statutory authorities suspending the licence issued to the petitioner under the Explosives Act 1884 (for short, the Act) legally valid and sustainable? The above question has arisen for consideration in this writ petition in the following facts and circumstances.

2. The petitioner was granted Ext. P1 licence by the competent authority in February 2002, to manufacture explosives. It is the admitted position that the said licence was renewed for a further period of two years which was due to expire on March 31, 2004. On January 26, 2004 at about 3.30 PM. a massive explosion took place in the work site where the petitioner was engaged in manufacture of explosives. Three persons lost their lives in the explosives. Three persons lost their lives in the explosion. One of the victims was a 12 year old boy. Ponnani Police registered Crime No. 34/2004 in this connection against the petitioner and two others for offences punishable under Sections 286 and 304 of the Penal Code and also u/s 9(B)(1) of the Explosives Act and Section 6 of the Explosive Substances Act, 1908.

3. On February, 12, 2004, respondent No. 1 the licensing authority, issued an order suspending the licence issued to the petitioner. In the said order it was mentioned that the licence was being suspended since the licensee (the petitioner) had contravened the conditions of the licence and manufactured explosives at various places in Ponnani Taluk, other than the licensed premises, by misusing the same. It was also noticed by the authority that Ponnani Police had registered Crime No. 35/2004 in connection with the explosion that took place at Chekannur in which three people had lost their lives. A copy of the said order is on record as Ext. P2.

4. The above order was challenged by the petitioner before respondent No. 2 in a statutory appeal u/s 6F of the Act. On September 29, 2004, the appellate authority (respondent No. 2) passed Ext. P3 order. In the said order the Appellate Authority took the view that the order of suspension had to remain in force till the disposal of the criminal case pending against the petitioner.

5. The prayer in this writ petitions to issue a writ of certiorari to quash Ext. P2 and P3 orders. There is a further prayer for issue of a writ of mandamus or such other appropriate writ or direction to respondents 1 and 2 not to interdict the petitioner from manufacturing explosives in the licensed premises in terms of the conditions of licence issued to him.

6. It is contended by learned counsel for the petitioner that Exts. P2 and P3 orders are ex facie illegal and vitiated. Learned counsel submits that the licence could not have been suspended on the ground that a criminal case was pending against the petitioner in connection with the explosion that occurred at a place other than the licensed premises. Petitioner has no connection with the alleged manufacture of explosives illegally carried out by his brother who unfortunately lost his life in the explosion. It may be true that petitioner's brother had been working with him some time back; but the petitioner was not aware that his brother was engaged in the above illegal activity. The Police had registered the crime on suspicion that petitioner was also involved in the alleged illegal activity and that he was responsible for the fatal explosion that took place, resulting in the death of three people. According to the learned counsel, petitioner's licence was liable to be notwithstanding the pendency of the criminal case. The above contention, in my view, is totally misconceived.

7. In this context it is pertinent to refer to the relevant provisions of Section 6E of the Act. which reads thus:

6E. Variation, suspension and revocation of licences: (1) The licensing authority may vary the conditions subject to which a licence has been granted except such of them as have been prescribed and may for that purpose require the holder of licence by notice in writing to deliver-up the licence to it within such time as may be specified in the notice.

(2) The licensing authority may, on the application of the holder of a licence, also vary the conditions of the licence except such of them as have been prescribed.

(3) The licensing authority may, by order in writing, suspend a licence for such period as it thinks fit or revoke a licence,-

(a) if the licensing authority is satisfied that the holder of the licence is prohibited by this Act or by any other law for the time being in force to manufacture, possess, sell, transport, import or export any explosive, or is of unsound mind, or is for any reason unfit for a licence under this Act; or

(b) if the licensing authority deems it necessary for the security of the public peace or for public safety to suspend or revoke the licence; or

(c).....

(d) if any of the conditions of the licence has been contravened; or

(e).....

(4) The licensing authority may also revoke a licence on the application of the holder thereof.

(5) Where the licensing authority makes an order varying the conditions of a licence under sub-section (1) or an order suspending or revoking a licence under sub-section (3), it shall record in writing the reasons therefor and furnish to the holder of the licence on demand a brief statement of the same unless in any case the licensing authority is of the opinion that it will not be in the public interest to furnish such statement.

(6) A court convicting the holder of a licence of any offence under this Act or the rules made thereunder may also suspend or revoke a licence:

Provided that if the conviction is set aside on appeal or otherwise, the suspension or revocation shall become void.

(7) An order of suspension or revocation under sub-section (6) may also be made by an appellate court or by the High Court when exercising its powers of revision.

(8).....

(9).....

It can be noticed that the licensing authority is empowered and authorised under clause (b) of sub-section 3, to vary, suspend or revoke a licence, if deemed necessary for the purpose to ensure "security of the public peace or for public safety". Clause (d) also enables the authority to exercise the above powers "if any of the conditions of the licence has been contravened."

8. In the case on hand, it is the admitted position that the Police had, after a due investigation, found that petitioner was liable to be prosecuted for an offence punishable u/s 9B(1) of the Act and also u/s 6 of the Explosive Substance Act, 1908. He has also been charged with commission of offences punishable under

Sections 286 and 304 of the Indian Penal Code. It is true that the petitioner has got a specific contention that he was not at all involved in the commission of the above crime. But the fact remains that the Investigating Agency has though otherwise, and the petitioner has been incriminated. Petitioner has to necessarily face the trial. He has to establish his innocence before the criminal court in the manner prescribed under law. But till such time the criminal proceeding culminates in conviction or acquittal, the record of investigation and the charge sheet submitted by the Police before the court u/s 173 of the Code of Criminal Procedure cannot be totally overlooked or ignored, especially in a case involving an offence punishable under the Explosives Act.

9. In this context clause (b) of sub-section (3) assumes greater significance. As noticed already, the above clause empowers the authority to vary, suspend or revoke a licence for "the security of the public peace or for public safety". Undoubtedly, any abuse or misuse of a licence issued under the Explosives Act will, not only endanger human life and property but it will also inevitably threaten public security and safety. If the authority concerned is satisfied that the licence issued by it has to be suspended or revoked in larger public interest, the said authority has to do so unhesitatingly. Even assuming no criminal case has been registered against the licence, the power vested in the licensing authority to invoke clause (b) of sub-section (3) of Section 6E will remain intact. The said power has to be exercised by the authority for the security and safety of the public.

10. The other contention raised by the petitioner is that the licensing authority was not justified in suspending the licence since the criminal court was already in seisin of the matter. His licence can be revoked or suspended or the conditions thereof can be varied only by the criminal court and that too only if he is found guilty of the charge levelled against him. It is also contended by the learned counsel that petitioner is entitled to get his licence renewed on application, despite the pendency of the criminal case.

11. In this context learned counsel tries to seek support from Rule 167 of the Explosives Rules 1983, particularly from sub-rule (2) of the said Rule which reads thus:

167. Suspension-revocation of licence:-

(1).....

(2) The suspension of a licence shall not debar the holder of the licence from applying for its renewal in accordance with the provocation of Rule 165.

There can be no room for any doubt that an order of suspension or revocation of a licence shall not debar the holder of the licence from applying for its renewal. But the grant of licence can only be subject to satisfaction of the conditions specified under the relevant statutory provisions and rules. It is not clear as to how the petitioner can derive any support from the rule quoted above. However while

laying heavy emphasis on the said sub-rule in Rule 167 read with sub-section (6) of Section 6E of the Act, learned counsel submits that the appellate authority has to be directed to reconsider the order of suspension of the licence. It is conceded by the petitioner that the term of his licence has expired on March 31, 2004. But it is his contention that the licensing authority is bound to consider the application that may be submitted by him for renewal of the licence. Petitioner has no case that he had applied for renewal of his licence. There is no averment to that effect in the writ petition. He has also not produced copy of the application, if any, submitted by him in this regard. In that view of the matter I am satisfied that no direction is liable to be issued as prayed for.

12. As regards the contention based on sub-section (6) of Section 6E of the Act, it has to be noticed that what is provided under the above clause is only that a Court convicting the holder of a licence for any offence under the Act or the rules made thereunder may also suspend or revoke a licence. It may be true that the criminal court is empowered to suspend or revoke a licence in the event of the court holding the licence guilty of an offence under the Act or the Rules. But that does not mean that the power vested in the criminal court under sub-section (6) of Section 6E of the Act is in derogation or supersession of the power vested with the licensing authority either to issue a licence or to suspend or revoke it. Undoubtedly grant of licence under the Act and the Rules is circumscribed by certain well defined terms and conditions. The licensing authority need issue or renew a licence to an applicant only if it is satisfied that he is entitled to hold such a licence. It is further clear from the statutory provisions under the Act and the Rules that the licensing authority can, at any time, vary the conditions of the licence. The authority can also revoke or suspend a licence for reasons to be recorded. This is explicit from sub-section (6) of Section 6E of the Act. Therefore the mere fact that a case is pending before the criminal court will not in any way abrogate the power of the licensing authority or the appellate authority to revoke or cancel the licence issued to the holder. The power vested with the criminal court to suspend or revoke a licence held by the accused on his conviction is not akin to the power of the licensing authority to suspend or revoke a licence. The power vested in the criminal court to revoke or suspend the licence of the accused on his conviction will not in any way curtail or infringe upon the right of the licensing authority. The contention raised by the petitioner based on sub-clause (6) of Section 6E is therefore wholly misconceived and untenable. For the reasons stated above, I have no hesitation to repel the contentions raised by the petitioner in this writ petition. I do so.

The Writ Petition fails and it is accordingly dismissed.