

(1988) 10 KAR CK 0023

In the Karnataka High Court

Case No : Writ Petition No's. 14990 to 14994, 15205 to 15224 and 15463 of 1988 and 15086, 15130 to 15160, 15302 and 15303 of 1987

P.A. Kannan etc.

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 31-10-1988

Acts Referred:

Explosives Act, 1884 — Section 14 (2), 4 (d), 5
Karnataka Police Act, 1963 — Section 31, 31 (1) (h)

Citation : AIR 1989 Kar 285 : (1988) 3 KarLJ 95

Hon'ble Judges : M. Rama Jois, J

Bench : Single Bench

Advocate : S. Hanumanthaiah, C.M. Desai, A.V. Srinivas, S. Shankaranarayana and C.N. Kamath, for the Appellant; D.R. Rajashekarappa, Government Advocate, for the Respondent

Judgement

1. In all these petitions, the petitioners who are dealers in fire-works, have questioned the legality of the orders made by the Commissioner of Police, City of Bangalore, and the District Magistrate of the concerned district requiring the petitioners to locate their shops for selling fire-works in temporary structures to be located at the specified open spaces.

2. The facts of the case, in brief, are as follow: All along both in the City of Bangalore and elsewhere, the dealers in fire-works were having their shops in their respective shops located in residential areas or in shopping centres. In the year 1979 there was a huge fire accident in the fire-works shops located in the busiest place in the City of Bangalore near Krishnarajendra Market, which resulted in huge loss of property and life. Thereafter, on 11-4-1980 the Government addressed a letter to the Commissioner of Police and others. The relevant portion of that letter reads:

" xxx xxx

Sub: Fire Accident at S. K. R. Market Bangalore - ways for prevent in fire

accident in future.

With reference to the above, I am directed to state that in order to avoid any untoward incident in future it is suggested that in future cracker shops should not be allowed at such congested areas whether they are residential areas or shopping centres. It is also suggested in future that in the month of July, the Administrator of Bangalore City Corporation, the Commissioner of Bangalore City Corporation, the Engineer (Buildings and Communication) and the Director of Fire Force should go round the city and select 4 or 5 areas which are considered safe and the Corporation should put up sheds made of corrugated Iron Sheets according to plan to be approved by the Chief Inspectorate of Explosives and the P. W. D. These shops be let out on rent to the licences 10 days before Deepavali. Nowhere else in the city sale of crackers should be allowed. The Commissioner of Police being the licence granting authority in the city, he should not grant licence to any one other than the prescribed places as suggested above.

The above instructions should be strictly followed and action taken accordingly. "

In the above letter, the Government desired the location of fire-works shops in open areas in temporary structures constructed in the manner indicated in the above letter. Since then in the City of Bangalore, during every Deepawali season, for a period of about two weeks, which is the only period during which there would be large scale sale of fire works, the fire-works dealers have been required to locate their shops in temporary structures constructed in the open spaces. Similar action was also taken in some of the big cities in the State by the District Magistrates concerned. It had become an annual feature that during this season the fire-works dealers were approaching this Court by means of writ petitions questioning the legality of the action of the concerned District Magistrates in requiring the location of shops for selling fire-works at the specified places, and by means of interim orders granted by this Court, some of the dealers who secured such interim orders, continued to do their business in the respective shops located in the business localities, and after the season was over, the writ petitions were being dismissed as having become unnecessary. The batch of writ petitions of 1987 were those presented during the last Deepawali season in which also there were interim orders. The learned counsel for the State submitted that as the orders passed by the Government and the District Magistrates were in public interest, the question should be decided finally. Even as the writ petitions of the year 1987 are pending, writ petitions of the year 1988 have been presented as similar orders have been passed by the Commissioner of Police, Bangalore, as also the District Magistrates of the concerned district, to be in force during this year's Deepawali which falls on 7th to 9th of next month

3. As all these petitions involve common questions of law and fact, they are being disposed of by this common order.

4. The possession and sale of explosives is regulated by the Explosives Act, 1884

("the Act" for short) and the Explosives Rules 1983, framed under the Act. The expression "explosive" is defined under S. 4(d) of the Act and it includes fire-works. Section 5 of the Act empowers the Central Government to frame rules, inter alia, prescribing the authority by which licence may be granted and also the conditions regarding the grant of licence. According to the Explosives Rules, the District Authority as defined under the Rules, is the licensing authority and according to the definition, the Commissioner of Police in Towns and the District Magistrate in other places, is the "district authority". The contention of the petitioners is that the letter issued by the State Government on 11-4-1980, extracted earlier, and the orders issued by the Commissioner of Police and the District Magistrates concerned requiring the location of shops for selling fire-works in temporary structures, are invalid being plainly contrary to the Rules as also Condition No. (1) of the licence. The relevant provisions of the Rules and the Condition No. (1) reads

"Sub-rule (1) of Rule 135.

All explosives on the premises shall be kept in a brick, stone or concrete building which is closed and secured so as to prevent unauthorised person from having access thereto.

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137. Safety distances to be maintained: The premises licensed in Form 24 for storage and sale of small arms nitrocompound, fireworks 15 metres from any such premises or any other premises used for storage of similar explosives, flammable or hazardous materials.

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Condition (1) of licence on Form 24.

All explosives on the premises shall be kept in a substantial brick stone or concrete building which is closed and secured so as to prevent unauthorised persons from having access thereto."

The petitioners also rely upon the circular issued by the Chief Inspector of Explosives on 24-12-1983. In the said circular, the Chief Inspector has adverted to the decision of several district authorities to locate shops of fire-works during Deepawali season in temporary sheds and proceeded to state that location of such shops in temporary structures would be contrary to the rules and there was no power under the Rules to impose any such condition. In particular they relied upon the following paragraph of the circular:

"In view of the above, I would request that all the District Authorities may kindly be advised to instruct all the inspecting officers not to permit the above type of temporary constructions, in the interest of safety, and they should strictly enforce the requirements of the rules so far as the keeping and selling of fireworks in the pucca shop are concerned.

Some of the district authorities in the country are in favour of allotting an exclusive open area outside the congested markets of cities/towns where temporary booths are provided for possession and sale of fireworks therefrom during Deepavali for a temporary period. This department had already advised the District Authorities about the advantages and disadvantages of such system and after considering the same if the District Authorities still desire to introduce booth system, specific guidelines were drawn up by this department for licensing such booths keeping the safety in mind. These guidelines were issued by virtue of powers vested with the Chief Controllerate of Explosives under the Old Explosives Rules 1940. Such powers do not exist in the new Explosives Rules 1983. In view of the above, the provision of temporary booths in open area outside the city/town for licensing to possess and sell fireworks under the new Explosives Rules, 1983, would not be in order. The District Authorities may kindly be advised accordingly.

"Having regard to the provisions of the Rules and Condition No. (1) of the Licence, extracted earlier and the circular of the Chief Controller of Explosives, the petitioners submit that the orders issued by the District Authorities requiring the location of shops of fire-works during Deepavali season in temporary structures erected in open spaces, would be plainly unlawful.

5. The contention of the petitioners would have been unexceptionable, but for the notification issued by the Central Government under sub-sec. (2) of S. 14 of the Act. Section 14(2) reads:

"14. SAVING & POWER TO EXEMPT.

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(2) The Central Government may by notification in the Official Gazette exempt, absolutely or subject to any such conditions as it may think fit to impose "any explosive and any person or class of persons from all or any of the provisions of this Act or rules made there under."

The notification issued by the Central Government under the above provision reads:

"GOVERNMENT OF INDIA

DEPARTMENT OF EXPLOSIVES

SHASTRI BHAVAN, MADRAS-6.

No. Ex/L/1. Subsidiary Dated : 6-10-1984.

In exercise of powers conferred by sub sec. (2) of S. 14 of Explosives Act, 1884, exempting from provision of sub-rule (1) of Rs. 135, 157 and Condition 1 of the license in Form 24 of Explosives Rules, 1983, explosives of class 7 and Dn. I and any person having to possess and sell the subject explosives from temporary shed to be licenced in Form 24 of Explosives Rules, 1983 by the District

Magistrate subject to the condition as per the given detailed condition (enclosed). The exemption is for temporary shed to be installed at open medians only. Extract of sub-rule (1) of Rules 135, 137, Condition 1 of licence in Form 24 and sub-sec. (2) of S. 14 are given below."

The notification after giving the relevant extracts of the Rules and the condition of the license also incorporated the conditions regarding the location of shops of fire works in temporary structures. The conditions read:

CONDITIONS

1. The fireworks shall be kept in a shed made of non-inflammable material which is closed and secured so as to prevent unauthorised persons having access thereto.
2. The sheds for possession and sale of fireworks shall be at a distance of at least 3 metres from each other and 50 metres from any protected works.
3. The sheds shall not be facing each other.
4. No oil burning lamps, gas lamps or naked lights shall be used in the shed or within the safety distance of the sheds for the purpose of lighting. Any electrical light, if used, shall be fixed to the wall or ceiling and should not be suspended by flexible wire. Switches should be fixed rigidly near the ceiling and a master switch should be provided for each row of sheds.
5. Display of fireworks shall not be allowed within 50M of any shed."

In view of the above notification, the contention of the petitioners that the directions issued by the State Government in the letter dt. 11-4-1980 and the orders issued by the Commissioner of Police in respect of City of Bangalore and the concerned District Magistrates in respect of other places requiring the location of shops for selling fireworks during Deepawali season in temporary structures was violative of the Rules and Condition No. (1) of the licence has to be rejected.

6. The learned counsel for the petitioners next contended that even on the basis that the orders issued by the district authorities cannot be regarded as contrary to the Rules, in view of the exemption granted by the Central Government by the notification issued under sub-sec. (2) of S. 14 of the Act, there is no power vested in the district authorities to compel such of the petitioners who have already got a permanent licence to shift their business to temporary structures during Deepawali season. The learned counsel submitted that the exemption notification issued by the Central Government read with the conditions laid down for locating shops for selling fire-works in temporary structures would only enable the District Authorities to require the persons who are desirous of taking temporary licence for selling fireworks during Deepawali season to do their business in temporary structures, but does not empower the District Authorities to compel such of the petitioners or others having permanent licence in respect

of permanent structures for selling explosives including fire-works, to shift their business to temporary structures during Deepawali season.

7. As far as this contention is concerned, it should be pointed out that S. 31 of the Karnataka Police Act, 1963, empowers the Commissioner of Police and the District Magistrate to make orders for various purposes as set out in the several clauses of the Section. Cl. (h) of that Section is relevant. It reads:

"31. POWER TO MAKE ORDERS FOR REGULATION OF TRAFFIC AND FOR PRESERVATION OF ORDER IN PUBLIC PLACES, ETC.

(1) The Commissioner and the District Magistrate, in or as under their respective charges or any part thereof, may make, alter or rescind orders not inconsistent with this Act, for-

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(h) licensing, controlling or in order to prevent obstructions inconvenience annoyance, risk, danger or damage to the residents or passengers in the vicinity, prohibiting the carrying in streets and public places of gunpowder of any explosive substance."

(Underlining by me)

The above Section expressly empowers the Commissioner of Police and the District Magistrates to protect the public from danger or risk or damage. The orders passed by the Commissioner of Police, Bangalore, and the District Magistrates squarely fall within the powers conferred on them under S. 31(1)(h) of the Karnataka Police Act. It is a matter of common knowledge that huge quantities of fireworks are sold only during Deepawali festival spreading over a period of 8 to 10 days preceding Deepawali, and for that purpose large number of people come to the shops which naturally results in overcrowding. Therefore, in order to protect from the danger or risk or damage that is likely to be caused to the residents of the locality in which the Shops are located in the event of any fire accident, the Commissioner of Police and, just if the District Magistrates have passed the orders requiring the shifting and/or location of shops for selling fireworks in specified open spaces in temporary structures constructed in accordance with the conditions imposed for that purpose. This is purely temporary precautionary measure for a period of about two weeks during Deepawali and is well within the power of the Commissioner of Police Bangalore, and the District Magistrates concerned under S. 31(1)(h) of the Karnataka Police Act. It is a reasonable restriction in public interest.

8. The learned counsel for the petitioners submitted that the permanent shops of such of the petitioners and others, who are wholesale dealers in fire works, are located in busiest business localities and therefore there was no justification for the impugned orders. If what the petitioners say is correct, it is for the respondents to consider as to whether even such permanent shops should not be required to be located in specified zone from the safety point of view. Whatever

that may be, that is no ground to interfere with the impugned, order, as admittedly coming together of large number of people for the purchase of fireworks and the sale of huge quantity of fireworks takes place only during Deepawali festival and the business of possession and sale of fire works during the rest of the year is comparatively very much less.

9. The learned counsel also complained that in constructing temporary structures, the conditions specified in the Government letter dt. 11-4-1980 as also the conditions laid down by the Central Government in the notification issued under S. 14(2) of the Act are not being obeyed. There can be no doubt that those safety measures must be complied with and the respondents are under a duty to ensure compliance with the conditions prescribed for locating fireworks shops in temporary structures during Deepawali season.

10. Lastly, the learned counsel for the petitioners submitted that in respect of such of the petitioners who have already permanent licence for the whole year, there was no justification to insist on their taking another licence for a temporary period.

11. I see force in this contention. If a person has already secured a permanent licence of fire works in a permanent structure, there is no justification to compel him to take another license for a temporary period when the permanent licence holds good for the whole year. In respect of such a person, all that need be done, in order to ensure that all the shops relating to fireworks are located in a specified place during Deepawali season is to require such person having permanent licence also to do his business in temporary structures allotted to him as is done in the case of other on their requisition, during the specified period and also to direct him not to do the business during Deepawali season in the premises in respect of which he has the permanent licence.

12. In the result I make the following order:

(I) The Challenge to the legality of the action taken by the Commissioner of police in respect of City of Bangalore and the District Magistrates of Tioga Tanker respectively regarding location of shops for selling fireworks in temporary structures in specified places during Deepawali season fails and the petitions are dismissed.

(ii) There shall, however, be a direction to respondents not to insist of the persons who are already having permanent licence for possession and sale of fireworks to take a temporary licence subject to the condition that during the prescribed period they shall also like others carry on their business of selling fireworks only in temporary structures located at the places specified by the district authorities and allotted to them at their request.

(iii) The respondents are also directed to ensure that temporary structures put up for locating shops for the sale of fireworks during Deepawali season, are in conformity with the prescribed conditions.

13. Order accordingly.