
(1983) 05 GAU CK 0019
In the Gauhati High Court
Case No : Civil Rule No. 1045 of 1982

R.L. Poddar

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 17-05-1983

Acts Referred:

Explosives Rules, 1940 — Rule 91, 91(3)

Citation : AIR 1984 Guw 50

Hon'ble Judges : N. Ibotombi Singh, J;B.L. Hansaria, J

Bench : Division Bench

Advocate : J.P. Bhattacharjee, P.C. Kataki, J.M. Choudhury and R.K. Gogoi, for the Appellant; P. Prasad, Government Advocate and S. Ali, Sr. Central Govt. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

N. Ibotombi Singh, J.—By this application under Article 226 of Constitution, the petitioner challenges the validity of the order dated 17-9-1982, Annexure VIII, passed by Sri S.K. Agnihotri, District Magistrate, Kamrup, Gauhati.

2. By our short order dated April 23rd, 1983, we quashed the impugned order stating that reasons would follow. We now state our reasons.

3. The petitioner obtained licence from the Chief Controller of Explosives, Nagpur, being licence No. Ex.-25 (3) 164/ AS-282/ Ex in form "L" for possession and sale of explosives under the Indian Explosives Act, 1884 (IV of 1884), read with the Explosives Rules, 1940, framed thereunder. The licence was renewed from year to year after expiry of the term each year on the 31st March. Subsequently the licence is renewable at the end of every two years. The Deputy Chief Controller of Explosives, East Circle, Calcutta, under his letter No. As-282-Ex dated 30th Jan. 1974, informed the petitioner that its licence shall be deemed to have been in force for possession and sale upto 31-3-1981 or until further advice in view of Sub-rule (3) of Rule 91 of the Explosives Rules, 1940. By the same letter, the

petitioner was intimated to submit application for renewal of licence for the years 1981-1983, so as to reach the office of the Deputy Chief Controller of Explosives, East Circle, Calcutta, by the 2nd March, 1981. A copy of the said letter was forwarded to the Deputy Commissioner, Kamrup, Gauhati, Assam, respondent No. 2 herein, with a request to send no-objection certificate to the officer of the Deputy, Chief Controller of Explosives at an early date. The petitioner submitted application on 22-1-1981 for renewal of the licence for the years 1981-83 to the Deputy Chief Controller of Explosives, East Circle, Calcutta, respondent No. 4 herein, along with the original licence and other particulars and the original treasury receipt showing the deposit of the renewal fee in compliance with the provisions of Sub-rules (3) and (3-A) of Rule 91 of the Rules, 1940. A copy of the said application was sent to the respondent No. 2. The petitioner's licence was also amended to cover possession and sale of different kinds and quantity of explosives as specified in the letter dated 10th February, 1982 of the Deputy Chief Controller of Explosives. The petitioner thereafter requested the De-Deputy Chief Controller of Explosives, respondent No. 4, to return the original licence as amended, as it was urgently required for verification of the local "District Authority". The Deputy Chief Controller of Explosives, however, informed the petitioner under letter No. AS-282/Ex dated June 2, 1982 that the licence as amended was being retained in the office for renewal and that renewal of the licence was pending due to non-receipt of no-objection certificate (NOC) from the District Magistrate Kamrup. It was also pointed out in the letter that as shown by the office record no NOC for renewal of licence had been received from the District Magistrate after 1974. A copy of the said letter was forwarded to the District Magistrate, Kamrup, respondent No. 2, with a request to take early action for issue of NOC. Despite such a request, the respondent No. 2 did not issue NOC and forward it to the licensing authority. On 19th July, 1982, an Executive Magistrate of Gauhati inspected petitioner's shop and asked the employees of the petitioner to produce the licence for verification. The petitioner could not produce it as the same had already been sent to the Deputy Chief Controller of explosives along with other documents for renewal. The respondent No. 2 thereupon on 6-8-1982 issued a notice to the petitioner to show cause in writing before him on or before 13-8-1982 as to why (i) the licence should not be revoked, (ii) the explosives covered by the said licence should not be forfeited to the State, and (iii) such penal action should not be taken against the petitioner as may be deemed fit for violation of the conditions of licence and the provisions of Section 5 of the Act and Rule 93 of the Rules. The petitioner submitted on 13-8-1982 show cause to the District Magistrate, Kamrup, respondent No. 1% wherein it was stated that the original licence was lying with the licensing authority, the same having been submitted along with the application for renewal for the years 1981-83 and other relevant documents in compliance with Sub-rule (3-A) of Rule 91 of the Rules, and consequently the licence shall be deemed to be in force until communication for refusal for renewal of the licence was sent to the petitioner, in view of Sub-rule (3) of Rule 91 of the Rules, that failure to produce the licence in the circumstances could not amount to violation of the

conditions of licence and provision of Section 5 of the Act, and as such, no action would lie u/s 5 of the Act and Rule 93 of the Rules framed thereunder and that the com-patent authority to take action for re-vacation of licence was the licensing authority and not the District Magistrate, Kamrup . The petitioner claimed personal hearing. The respondent No. 2 after hearing counsel for the petitioner passed the impugned order, Annexure VII to the petition. The basis of the impugned order was that the petitioner submitted the renewal application to the Deputy Chief Controller of Explosives much ahead of its scheduled time and without obtaining the required NOC from the District Magistrate, Kamrup, Gauhati, which is a pre-requisite condition for grant of renewal of explosive licence and that the licensee did not apply for the NOC in time to the District Magistrate for renewal of the licence and since the grant of NOC is not a matter of course, the licensee shall not be granted NOC. By the said order, he intended the Deputy Chief Controller of Explosives, East Circle, Calcutta, to take steps for revocation of the licence and instructed the police to seize the stock of explosives in the magazine at Narengi held by the petitioner.

4. The petitioner challenges the validity of the order of the District Magistrate above in the present writ proceeding. In the affidavit filed on behalf of the respondents 1 and 2, it was averred that the District Magistrate, Kamrup, wanted clarification from to Chief Controller of Explosives, Nagpur, by his express letter dated 17-5-92, Annexure I, if the provisions of Sub-rule (3) of Rule 91 of the Explosive Rules could be invoked in the case and in reply to the letter, the Deputy Chief Controller of Explosives Calcutta, informed the District Magistrate, Kamrup, that the renewal of licence has been kept pending for non-receipt of NOC from the District Magistrate. In regard to the issue of NOC, the District Magistrate, Kamrup, informed the Chief Controller of Explosives as well as the Deputy Chief Controller of Explosives, East Circle, Calcutta, that he was not inclined to grant NOC due to petitioner's involvement in certain cases. It was further averred that production of NOC is a pre-requisite for renewal of a licence and that non-production of the licence is a dear violation of the provision of law and the impugned order, was legal and justified. The respondent Nos. 3 and 4. however, in their counter affidavit stated that the Department sought for NOC from the District Magistrate Kam-rup, Gauhati, far renewal of the licence and as "No-objection certificate" was not issued, the petitioner's licence could not be renewed beyond 31-3-74 but the licence was valid, in view of provision of Sub-rule (3) of Rule 91 of the Explosive Rules and that no objection certificate envisaged in Rule 86 is for grant of & new licence and is not applicable in the case of renewal of licence. It was further stated that under Sub-rule (3) of Rule 91 renewal application together with the original licence should reach the renewal authority at least 30 days before the date on which the validity or the licence expires and it does not prohibit submission of application at an earlier date and that the original licence was lying in the office of the Deputy Chief Controller of Explosives, East Circle, Calcutta, as stated by the petitioner. In short, it is also the case of the Respondents 3 and 4 that there was no

remissness on the part of the petitioner in not producing the Original licence; it is not incumbent on the pan of the petitioner to apply to the District Magistrate, Kamrup, for NOC, since NOC is not a prerequisite condition for grant of renewal of licence; and the licence stood valid, in view of Sub-rule (3) of Rule 91 of the Rules. While the petition is pending before this Court, the Controller of Explosives under his letter dated 5th March, 1983, intimated also the petitioner that the licence shall under Sub-rule (3) of Rule 91 of the Rules be deemed to be in force for possession and sale at the explosives described therein up to 31-3-35 or (sic) further advice, on the basis of the petitioner's application for renewal of the licence for 1983-84 and 1984-85. A copy of the said letter was forwarded to the District Magistrate, Kamrup, Gauhati, respondent No. 2, informing him that the licence of the petitioner has not been cancelled, since the reasons for his refusal to grant NOC for renewal of the licence could not be held appropriate, because the licensee was not required to apply to the District authority for NOC for renewal of licence.

5. In our view, the stand taken by the petitioner as well as by the respondent Nos. 3 and 4 is in conformity with the law. Sub-rule (3) of Rule 91 provides that every application for the renewal of licence shall be made so as to reach the licensing authority at least 30 days before the date on which the licence expires, and if the application is so made, the licence shall be deemed to be in force until such dale as the licensing authority renews the licence or until an intimation that the renewal of the licence is refused has been communicated to the applicant. Since the petitioner has submitted the application for renewal of the licence on 21-1-61 more than 30 days before the date on which the licence expires, the licence shall be deemed to be in force until refusal has been communicated to the petitioner. There is no legal bar to the submission of the application beyond 30 days of the date on which the licence would expire. What is envisaged in Sub-rule (3) is that the application should reach the licensing authority at least 30 days before the date on which the licence expires. Sub-rule (3-A) of Rule 91 also provides that every application under Sub-rule (3) shall be accompanied by the licence which is to be renewed together with the approved plans attached thereto, wherever applicable end the original treasury receipt showing the deposit of the renewal for under the correct head of account. The petitioner was bound to send the original licence for renewal to the lancing authority, and he did so. It was therefore, not possible for the petitioner to produce the licence before the Executive Magistrate when called upon to do so on 18-7-82. The petitioner was as such not at fault for failure to produce the same.

6. In regard to the issue of the NOC, a perusal of Rule 86 would show that the no objection certificate from the District authority is required in the grant of a licence in Form "L" or under Article 8 of the Schedule IV but not in the case of renewal of the licence, Rule 91 provides for renewal of licence, and Sub-rule (2) provides that the In spector of Explosives authorised by the Chief Inspector under Sub-rule (1) may, and when so required by the Chief Inspector shall, require the licensee to follow the procedure laid down in Sub-rule (2) of Rule 86

before renewing a licence in form "L" or under Article 8 of Schedule IV. It is thus manifestly clear that NOC is not required under the rules in the case of the renewal of the licence in such a case. No legal duty is, however, cast on the licensee to apply to the District authority for issue of no objection certificate in the case of renewal of the licence. The District authority, Kamrup, ought to have issued the no objection certificate, if required at all under executive instruction, as intimated to him earlier by the licensing authority. In that view of the matter, the District Magistrate, Kamrup, Gauhati has erred in law in holding that the petitioner did not apply to him for LOC,

7. There is another serious infirmity in the impugned order. First, the reason mentioned in the impugned order for refusal to grant NOC was that the petitioner did not apply in time to the District Magistrate for the purpose of renewal of the licence and that grant of licence is not a matter of course. But in the affidavit of respondents 1 and 2 a fresh reason has been given stating that it was due to the petitioner's alleged involvement in certain cases that the respondent 2 was not inclined to grant the NOC, Such a course is not open to the Respondents 1 and 2 in the eye of law.

8. In *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, the Supreme Court pointed out the law on the subject. It held:-

"When a statutory functionary makes an order based on certain grounds, validity must be judged by the reason so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, gets validated by additional grounds later brought. We may here draw attention to the observations of Euse J. in *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, at p. 18 "Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and the conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

Orders are not like the old wine becoming better as they grow older."

9. Secondly, at no point of time, reason for refusal to grant NOC to the petitioner was disclosed. He was not furnished with the reasons for refusal to grant NOC despite the application made on 14-10-82 by the petitioner affixing court fee of Rs. 2.00, as required under Rule 86-A (2) of the Explosives Rules. The Respondent 2 has not controverted the averment of the petitioner in this respect. The petitioner, at no material time, was informed of the alleged involvement in certain cases on the basis of which the District Magistrate did not desire to grant the NOC. Such an adverse remark against the petitioner to hinder the back of the petitioner and without giving the petitioner the opportunity of being heard

violates also the principles of natural justice. It is as such not sustainable in law.

10. We also do not find any provision under the Act and the Rules framed thereunder under which the District Magistrate Kamrup, could take any action for revocation of the licence usurp-(sic) upon himself the jurisdiction of the (sic) authority. Under Rule 83 of (sic) Rules, it is only the licensing authority who is competent to take action to (sic) or cancel licence for any "con-travention of the Act or of the Rules thereunder or of any condition contained in such licence, after complying with the revisions laid down therein.

11. For the reasons stated above, the (sic) of the District Magistrate, respondent No. 2, impugned herein, is without jurisdiction and is declared void and quashed. The petitioner is at liberty to dispose of the stock of explosives in the custody of the petitioner. There can be no legal impediment to the renewal of the licence by the licensing authority for the period up to 31-3-1985 or until further advice in respect of the licensee has made application, as intimated in the letter dated 5th March, 1983.

12. In the result, the petition is allowed. Rule is made absolute. There will, however, be no order as to costs.

B. L. Hansaria, J.

I agree.