

(2022) 10 TEL CK 0056
In the Telangana High Court
Case No : Writ Petition No. 28994 Of 2021

Sanjay Kumar Bhope

APPELLANT

Vs

Commissioner Of Police

RESPONDENT

Date of Decision : 18-10-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Explosives Rules, 2008 — Rule 115(1)(c)

Citation : (2022) 10 TEL CK 0056

Hon'ble Judges : B. Vijaysen Reddy, J

Bench : Single Bench

Advocate : D B Chaitanya

Final Decision : Dismissed

Judgement

1. This writ petition is filed questioning the action of the 1st respondent in issuing proceedings No.L&O/A1/990/2017-2020 dated 29.04.2021 purporting to cancel the No Objection Certificate (NOC) dated 16.04.1991 issued by the Commissioner of Police, Hyderabad to the petitioner permitting him to run a firework shop at premises No.16-2-674/4, Malakpet, Hyderabad, without recording the required findings/reasons as per Rule 115 (1) (c) of the Explosives Rules, 2008.

2. The petitioner applied for NOC to the 1st respondent-Commissioner of Police, Hyderabad, for grant of fireworks licence in Form No.24 to deal with fireworks as per the Explosives Rules, 2008 (for short 'the Rules'). The petitioner was issued NOC vide proceedings No.L&O/Q/990/90 dated 16.04.1991 subject to the condition of fulfilment of fire precautionary and preventive measures as mentioned in the proceedings in Rc.No.3093/A5/89 dated 20.08.1990 of the Divisional Fire Officer, Hyderabad. The NOC was valid for a period of three months. It appears, the said NOC was renewed from time to time. In pursuance thereof, the petitioner was granted licence No.AP 1671/E dated 14.05.1991 in Form 24 of the Rules by the Deputy Chief Controller of Explosives, South Circle,

Chennai, for running fireworks shop by name M/s. Shanti Fire Works at premises No.6-2-674/4, Malakpet, Hyderabad. It is stated that the petitioner had been running the said shop for the past 30 years without any complaint. While so, under the impugned proceedings, the 1st respondent in exercise of power under Rule 115 (1) (c) of the Rules, has cancelled NOC dated 16.04.1991.

3. Heard Mr. Vedula Venkata Ramana, learned Senior Counsel appearing for Mr. D.B. Chaitanya, learned counsel for the petitioner, and Mr. S. Rama Mohan, learned Assistant Government Pleader for Home appearing for the respondents, and perused the material on record.

4. Mr. Vedula Venkata Ramana, learned Senior Counsel appearing for the petitioner, submitted that there were no complaints against the petitioner for the past more than 30 years. The petitioner had been running the said fireworks shop throughout the year and there was no incident of fire accident in and around the shop all these years. On a complaint lodged by the third party, who claims to be a resident of Judges Colony, Malakpet, that his residential area is at proximate distance and continuance of the petitioner's fireworks shop would endanger the lives of public at large, the impugned proceedings have been issued. A show cause notice dated 04.11.2020 was issued to the petitioner to submit his explanation as to why necessary action should not be taken for cancellation of NOC dated 16.04.1991. Pursuant thereto, the petitioner submitted his explanation on 27.11.2020 and 02.02.2020 stating that continuance of his fireworks shop at the subject premises would not cause danger to the lives of nearby locality people.

5. Learned Senior Counsel further submitted that the impugned proceedings are patently arbitrary and illegal. It is contended that the complaint for cancellation of NOC of the petitioner was made at the instance of rival traders. No finding is recorded by the 1st respondent with regard to endanger of public safety. As there was no instance of fire accident for the past 30 years, cancellation of NOC of the petitioner is unwarranted. The authorities being satisfied with the fire safety measures taken by the petitioner continued the licence of the petitioner from time to time. Assuming that some more safety measures are required, the 1st respondent could have directed the petitioner to take additional safety measures. The impugned proceedings are issued without application of mind. It appears, the 1st respondent has issued impugned proceedings mechanically going by the report of the Director General, Telangana State Disaster Responses & Fire Services Department in RC.No.1496/MSB/2020 dated 25.03.2021. Alternatively, the learned Senior Counsel submits that the impugned order may be set aside and the matter may be remanded for fresh enquiry as no reasons are discernible from the impugned proceedings as regards safety so as to cancel the NOC invoking power under Rule 115 (1) (c) of the Rules.

6. The learned Assistant Government Pleader for Home submits that inspection of the subject premises/shop was made before cancellation of NOC. The concerned officials of the Fire Services Department inspected the subject shop. It

was found that the shop is located in a residential area. The building comprises of ground + two upper floors and fire crackers are being sold in the ground floor. The shop of the petitioner is adjacent to a building comprising of ground + three upper floors. The fire crackers are being sold in the shop of the petitioner throughout the year and there is threat to safety of the residents in the neighbourhood and nearby locality people. Under Rule 115 (1) (c) of the Rules, the 1st respondent has power to cancel NOC when public peace and safety are the factors.

7. Rule 115 (1) (c) of the Rules reads as under:

"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."

8. In the report dated 25.03.2021 submitted by the Director General, Telangana State Disaster Responses & Fire Services Department, it is stated as under:

"1. The permanent explosive (Fire Cracker) material outlet situated on the sub-road of Vijayawada Highway and surrounded by complete Residential area.

2. The outlet has Ground + 02 Upper floors storied structure and at present, Fire Crackers found only in Ground floor. Above two floors are vacant now.

3. No open spaces found around the outlet and it is present adjacent to the owner's Residence of Ground + 03 Upper floors storied structure within the same compound wall.

4. The Fire Cracker outlet will be kept open throughout the year and supported by improper Hose reel and insufficient Terrace tank."

9. It is pointed out by the 1st respondent that as per G.O.Ms.No.47 Home (Services-IV) Department dated 27.04.2016, the Government has issued clear guidelines for setting up temporary/permanent building/structure for sale/storage of Fire Crackers according to the terms and conditions of Fire Service Licence and at present, the structure does not have a valid fire licence from the Department as per the terms and conditions of Fire Service Licence. The subject shop is situated in a complete residential area with multiple floor structures without proper open spaces and fire safety systems and it is very dangerous to continue the licence to the outlet for further period.

10. It is not disputed that the shop is situated in a residential locality. The landscape of Hyderabad city, more particularly Malakpet, has changed in the past 30 years. The 1st respondent, having requisitioned report from the Director General of Telangana State Disaster Responses & Fire Services Department, Hyderabad, came to the conclusion that there is threat to safety of residents in the locality and it is not safe to continue the licence of the petitioner.

11. Public peace and safety, which are the factors that can be looked into by the 1st respondent for cancelling the NOC, cannot be interpreted in a narrow manner. It is not in dispute that the building where Fire Crackers are being sold is a residential building and surrounded by other residential buildings. Having considered the report of the Director General of Telangana State Disaster Responses & Fire Services Department, Hyderabad, the 1st respondent held that it is not safe to continue the licence of the petitioner. The contention of the learned Senior Counsel that the 1st respondent issued the impugned proceedings without application of mind, which is contrary to Rule 115 (1) (c) of the Rules, is not acceptable. The storage of explosives always involves safety risks. It cannot be assumed that there would not be any fire accident in future merely because there is no complaint against the petitioner for the past 30 years. The authority certainly would have to consider the safety aspect keeping in mind the risk of fire accident that may occur as the fire crackers are highly inflammable. Safety of locality people is the paramount consideration. Thus, the decision taken by the 1st respondent to cancel NOC cannot be said to be arbitrary, unreasonable or contrary to the provisions of law, as storage of explosives endangers safety of the residents in the nearby locality. It is settled law that this Court under Article 226 of the Constitution of India cannot review the decisions of the administrative authority by exercising appellate jurisdiction. The power of judicial review is limited. Unless there is patent error in the impugned order or the order is passed in contravention of the provisions of law or Constitution, normally, this Court would not interfere with the decisions of the administrative authority. In the opinion of this Court, the impugned proceeding does not suffer from any material irregularity or illegality.

12. Therefore, the writ petition is dismissed. No order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the writ petition stand closed.