

(1992) 04 PAT CK 0022
In the Patna High Court
Case No : C.W.J.C. No. 2759 of 1991 (R)

Sheikh Rasool Mohammad and Sons

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-04-1992

Acts Referred:

Explosives Act, 1884 — Section 6E(3), 6E(5), 6E(8)

Citation : (1992) 2 BLJR 1005

Hon'ble Judges : S.B. Sinha, J;N. Roy, J

Bench : Division Bench

Judgement

S.B. Sinha and N. Roy, JJ.—This application is directed against the order dated 1-9-1987 passed by the Chief Controller of Explosive (Respondent No. 3) and as contained in Annexure-3 to the writ petition, whereby and whereunder the licences granted to the petitioner under the provisions of the Indian Explosives Act, 1884 (hereinafter referred to for the sake of brevity as the said Act) were revoked.

2. The fact of the matter is not much in dispute. The petitioner was the holder of the following licences granted to it under the provisions of the said Act.

-----	Licence No.
Place District -----	
E. 25(6) 796/Bi-826/Ex Rوتا Hazaribagh	E. 25 (6)1103/Bi-1066/Ex Rوتا Hazaribagh
E. 25 (6) 1349/Bi-1215/Ex Rوتا Hazaribagh	E. 25 (6) 1107/Bi-1549/Ex Ramdaga Ranchi
E. 25 (6) 1220/Bi-1088/Ex Rol Ranchi	E. 25 (6) 1347/Bi-1595/Ex Rol Ranchi
E. 25 (6) 1348/Bi-1596/Ex Rol Ranchi	E. 25 (8) 819/MP-4066/E Gorbi Sidhi
E. 7.5 (8) 820/MP-4067/E Gorbi Sidhi	E. 25 (8) 821/MP-4068/E Gorbi Sidhi
E. 25 (8) 822/MP-4068-A/E Gorbi Sidhi	

3. By an order dated 6-11-1985, the respondent No. 3 suspended all the aforementioned licences of the petitioner. The said period of suspension was extended from time to time.

By reason of the impugned order, thereafter, as noticed hereinbefore, the licences of the petitioner were directed to be revoked.

4. The petitioner, thereafter, filed representation dated 31-7-1990 (Annexure-4) before the "Home Minister". The said representation was forwarded to the Ministry of Industries. By an order dated 11th June, 1991, the Deputy Minister of industries, Government of India directed revival of the explosive licences of the petitioner.

According to the petitioner, however, despite the said direction, the licences of the petitioner have not been revived by the respondent No. 3,

5. In this case, a counter affidavit has been filed on behalf of the respondents.

In the said counter affidavit, it has been contended that several complaints had been received as against the petitioner with regard to its functioning as a licensee under the said Act and the Central Government upon taking into consideration thereof directed the respondent No. 3 to cancel the licences of the petitioner and in pursuance thereof the impugned order as contained in Annexure-3 to the writ petition had been passed.

6. Before us Mr. A.K. Trivedi, the learned Additional Standing Counsel, Central Government has also placed a letter dated 27th August, 1987 issued by Sri A.V. Gokak, Joint Secretary of the Ministry of Industries addressed to the respondent No. 3 for our perusal,

7. Mr. Kalyan Roy, the learned Counsel appearing on behalf of the petitioner has raised a short question in support of this application.

The learned Counsel submitted that the impugned order, as contained in Annexure-3 to the writ application cannot be sustained, in view of the fact that prior to passing of the said order neither any notice had been given asking the petitioner to show cause as to why his licences shall not be revoked, nor any reason has been assigned in support thereof.

8. The learned Counsel further contended that in any event, the revocation of the petitioner's licences having not been published in the official Gazette, in terms of the provisions of Section 6-E(8) of the said Act, the same must be held to be wholly illegal and without jurisdiction.

It was further submitted that had an opportunity of hearing been given to the petitioner, it could have shown that the allegations made as against him are false and imaginary.

9. By a supplementary affidavit, our attention has been drawn to the fact that the criminal case pending as against the petitioner has resulted in acquittal of the partners of the petitioner's firm.

It was further submitted that the other documents referred to in the counter affidavit had absolutely no relevance for the purpose of revocation of the licence

as granted to the petitioner.

10. Mr. A. K. Trivedi, the learned Additional Standing Counsel, Central Government appearing on behalf of the respondents however submitted that there is no provision of giving an opportunity of hearing to the petitioner prior to issuance of an order revoking the licence under the said Act.

The learned Counsel submitted that in view of the fact that several confidential communications had been received by the Ministry of Industries as against the petitioner from different sources, it was considered expedient in the public interest to revoke the licences of the petitioner.

11. Sub-sections (3), (5) and (8) of Section 6-E of the said Act, which are material for the purpose of this decision reads as follows:

Sub-section 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 or the security of the public peace or for public safety to suspend or revoke the licence ; or

(c) if the licence was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the licence or any other person on his behalf at the time of applying the licence ; or

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

(e) if the holder of the licence has failed to comply with a notice under Sub-section (1) requiring him to deliver up the licence.

"Sub-section 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 therefore 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."

Sub-section 8.-"The Central Government may, by order in the official Gazette, suspend or revoke, or (sic) direct any licensing authority to suspend all or any licences granted under this Act throughout India or any part thereof.

12. From a perusal of the aforementioned provisions, it is evident that power to revoke the licences had been conferred upon two different authorities, namely, the licensing authority in terms of Sub-section (3) of Section 6-E of the said Act and in the Central Government, in terms of Sub-section (8) thereof.

In terms of Sub-section (3) of Section 6-E of the said Act, the authority has the jurisdiction to revoke the licence of a licensee in the event one or the other factors enumerated in Clauses (a) to (e) thereof are fulfilled.

13. Sub-section (5) of Section 6-E of the Act postulates that where the licensing authority inter alia revokes a licence, it shall record in writing the reasons therefore and furnish to the holders of the licence on demand a brief statement of the same unless he is of the opinion that the same would not be the public interest.

14. In this case, admittedly, neither any opportunity or hearing was given to the petitioner nor the impugned order is supported by any reasons.

It is now well known that before a quasi-judicial authority exercises its statutory power, by reason whereof, civil or evil consequences ensue, the person who may be affected thereby would be entitled to an opportunity of being heard.

15. It is now well settled that principles of natural justice and fair play in action have to be read in the provisions of the Statute unless the same is excluded expressly or by necessary implication.

When a licence is granted to a person, he becomes entitled to carry on his business in terms thereof. Suspension or revocation of such a licence entails civil consequences so far as licensee is concerned.

In that view of the matter, there cannot be any doubt that the respondents prior to passing of the impugned order, were required to comply with the minimal requirement of the principle of natural justice.

16. Further, in this case, as indicated hereinbefore, it has clearly been admitted by the respondents that the impugned order has been passed by the respondent No. 3 pursuant to the direction given by the Central Government, the Central Government itself could have passed an order under Sub-section (8) of Section 6-E of the said Act, but it did not choose to do so and directed the licensing authority to do so. Such a power cannot be exercised by the Central Government arbitrarily or capriciously.

The Central Government, therefore, was also bound to comply with the principles of natural justice.

17. In any event as the Central Government itself directed for revival of the licences of the petitioner, the respondent No. 3 was bound thereby.

The impugned order, therefore, cannot be sustained.

18. For the reasons aforementioned, this application is allowed and the impugned order as contained in Annexure-3 to the writ application is quashed.

However, in the facts and circumstances of the case, there will be no order as to costs.