

(2011) 03 JH CK 0114
In the Jharkhand High Court
Case No : Writ Petition (C) No. 124/10

Sri Sal Centre

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 01-03-2011

Acts Referred:

Statical and Mobile Pressure Vessels (Unfired) Rules, 1981 — Rule 46A

Citation : (2011) 2 JCR 174 : (2011) 2 JLJR 53

Hon'ble Judges : Poonam Srivastava, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Poonam Srivastav, J.—Heard learned Counsel for the Petitioner- applicant and also the State counsel on behalf of the contesting Respondents.

2. The present Interlocutory Application being I.A. No. 584 of 2011 has been preferred challenging the order of the Deputy Commissioner, East, Singhbhum Jamshedpur dated 12th February, 2011, whereby the application made on behalf of the Petitioner to issue a "No Objection Certificate" was rejected. Three grounds are enumerated for refusing to grant of No Objection Certificate.

3. The Petitioner has preferred the present writ petition challenging demand of land rent and road cess in respect of 61.23 acres of land situated at Ward No. 11. Mouza Bara, Jamshedpur. A direction in the nature of mandamus has also been prayed for challenging the demand of annual rent of Rs. 1,86,75.150/- (Rupees One Crore Eighty Six lakh Seventy Five Thousand One Hundred Fifty) calculated at the rate of 5% of the market value of the land besides cess and other certain demand by the State Government.

4. The Petitioner Tata Blue Scope Steel Limited has set up a Factory in the aforesaid Area of 61.23 acres of land and he is required to set up a propane gas plant.

5. Chapter-V of the Static and Mobile Pressure Vessels (Unfired) Rules, 1981, (hereinafter referred to as the Rules) prescribes for grant of licence for storage of compressed gas. Before the licence is granted a prior approval of specification and place of vessels and premises proposes are to be examined and before grant of license the District authority is required to issue a "No Objection Certificate" under Rule 46-A of the Rules.

6. The Petitioner applied for grant of licence, since no factory could be commissioned in absence of "compressed propane gas" in the instant case. The Petitioner was required by the Joint Chief Controller of Explosives to furnish a N.O.C. Along with other documents, which were pre-requisite for grant of licence for storage the gas. Annexure-19 to the I.A. is a letter dated 4th June, 2009 addressed to the Petitioner requiring him to furnish the documents; detailed at the bottom of the letter. A no objection certificate under Rule 46-A of the Rules Issued from the District authority along with site plan endorsed by him was one of the essential requisite. Applications were moved for grant of "No Objection Certificate" vide Annexures-27, 28 and 29 to the I.A. The Deputy Commissioner, East Singhbhum Jamshedpur vide his order dated 12th February, 2011 rejected the said applications, which is Annexure-32 of the I.A.

7. The learned Counsel has apprised the Court that an order was passed on 15th February, 2011 In these writ petitions by this Court fixing 22nd March, 2011, but the Respondents counsel failed to bring the order dated 12.2.2011 to the notice of the Court. However, the question of grant of "No Objection Certificate" was not being considered by the Court on 15th February, 2011 and, therefore, it is immaterial whether the order challenged in this I.A. dated 12th February, 2011 was brought to the notice of the Court or not.

8. Since the Petitioners are not able to commission the Factory for want of "No Objection Certificate", the learned Counsel has impressed upon the urgency for grant of "No Objection Certificate" with an unequivocal assertion to the effect, in the event the writ petition is dismissed, the Petitioner shall deposit the entire amount whatever is found due against him.

9. At present I am required only to examine and adjudicate the order dated 12th February, 2011. On perusal of the impugned order dated 12th February, 2011, it transpires that "No Objection Certificate" has been refused on three grounds; first for non- compliance of the conditions of the sub-lease, i.e. that the agreement was to be executed within a period of three months, else it will be treated to be rejected. The Petitioner sub lessee was required to furnish the agreement; Second ground for rejection is that the sub-lessee has not deposited up-to-date rent i.e. for the year 2008-09, 2009-10, 2010-11 and third ground is that M/s. Tata Blue Scope Steel Limited has preferred writ petition being W.P. (C) No. 1181 of 2009, which is still pending decision.

10. I have carefully studied the provisions and requirement of Rule 46-A of the Rules regarding grant of "No Objection Certificate". Sub-rule 1 of Rule 46-A of

the Rules is only for the limited purpose that the District Authority has to examine the site plan to ensure that the storage of compressed gas in pressure vessel at the site proposed will not be hazardous for the residents in near vicinity. The District Authority is, therefore, only to examine the preemies proposed to be licensed under the Rules for grant of "No Objection Certificate", nothing beyond this. The impugned order is completely lacking any inquiry whatsoever made by the Deputy Commissioner as was required under Rule 46-A of the Rules". He has not even mentioned the site plan of the proposed site where the compressed gas is to be stored or any other requisite inspection of the said site, which is to be licensed. On the contrary he has indulged himself in enumerating certain questions relating to grant of lease, registration of the lease deed and payment of the lease rent etc., which is beyond the scope of Rule 46-A of the Rules before issuance of "No Objection Certificate". It is also mentioned in the impugned order that the matter is sub-judice before the High Court and, therefore, if cannot be said that the Deputy Commissioner was not aware of the fact that there is a stay order operating against the Respondents regarding all the matters relating to the execution of lease deed, registration of the lease deed or payment of the lease rent. Apparently the Deputy Commissioner has failed to comply the provisions of Rule 46-A of the Rules and evidently his order is unsustainable in the eyes of law.

11. For the reasons discussed above, the impugned order dated 12th February, 2011 vide Annexure 32 to the I.A. is absolutely illegal and hereby quashed. I am satisfied that the Deputy Commissioner was guided by certain preconceived notions instead the question of grant of licence etc. and he has not applied his mind to the basic requirement of the Rules.

12. In the circumstances I direct the Deputy Commissioner, East Singhbhum Jamshedpur, to re-examine the application made at the behest of the Petitioner for grant of "No Objection Certificate" under Rule 46-A of the Rules, make an inspection of the site, examine the site plan and in case there is any requisite information, he shall call upon the Petitioner and/or his representative and hear him and decide the matter relating to grant of "No Objection Certificate". The Deputy Commissioner is not required to question the Petitioner or any question relating to grant of lease deed or payment of lease rent, which shall be decided by this Court on the date fixed. The Deputy Commissioner shall bear in mind that on account of delay in issuance of "No Objection Certificate" the Factory could not be commissioned and is incurring heavy loss day by day, the labours have already been engaged, who are sitting idle, since the commission of the Factory depends on issuance of "No Objection Certificate" besides it is a notional loss. The Deputy Commissioner is further directed to pass a final order after completing all formalities within a period of 10 days from the date a certified copy of this order is produced before him and pass a final order relating to grant of "No Objection Certificate" in conformation with the Rule 46-A of the Static and Mobile Pressure Vessels (Unfired) Rules, 1981.

13. The order passed by Dy. Commissioner, East Singhbhum, Jamshedpur dated 12.2.2011 (Annexure-32 to the I.A.) is hereby quashed and the interlocutory application stands allowed.

W.P. (C) No. 124 of 2010 and W.P. (C) Nos. 1181, 2160 and 2655 of 2009

14. The date fixed in these writ petitions is 22nd March, 2011. Both the counsels appearing for the respective parties have agreed that since 22nd March, 2011 is the opening day after Holidays, as such, these cases may come on 24th March, 2011 instead of 22nd March, 2011.

15. As prayed for, put up these cases on 24th March, 2011 for final hearing under the heading for admission.