
(2016) 01 PAT CK 0045

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 8309 of 2012 and I.A. No. 4716 of 2014

Tirupati Trading

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 05-01-2016

Acts Referred:

Citation : (2016) 01 PAT CK 0045

Hon'ble Judges : Jyoti Saran, J.

Bench : Single Bench

Advocate : Sanjeev Ranjan, for the Appellant; Kanak Verma, C.G.C., for the Respondent

Final Decision : Allowed

Judgement

Jyoti Saran, J.—1. Heard Mr. Sanjeev Ranjan, learned counsel appearing on behalf of the petitioner, Ms. Kanak Verma, learned Central Government Counsel and Mr. Rajesh Kumar, learned Assisting Counsel to Government Pleader No. 10 for the State.

2. The petitioner is aggrieved by the order bearing Memo No. 442 dated 19.11.2011 of the District Magistrate, Sheikhpura passed in purported exercise of power vested under rule 115 of the Explosives Rules, 2008 (hereinafter referred to as "the Rules") framed under the Explosive Act, 1884 (hereinafter referred to as "the Act"), whereby he has recalled the "no objection certificate" granted to the petitioner, a copy of which is placed at Annexure-4 to the writ petition and which decision has been communicated to the Deputy Chief Controller of Explosives for necessary onward action. It is following the order of the District Magistrate impugned at Annexure-4 that the licence of the petitioner under "the Act" and "the Rules" framed thereunder stands cancelled by the Chief Controller of Explosives as communicated by the Deputy Chief Controller of Explosives vide order passed on 4.3.2012 and which is sought to be questioned by the petitioner by filing an interlocutory application bearing I.A. No. 4716 of 2014 impugned at

Annexure-8 thereof.

3. Considering that the cancellation of the explosive licence is only a consequence of recall of the "no objection certificate", the prayer made by the petitioner to question the cancellation of licence in the present proceeding is allowed and I.A. No. 4716 of 2014 is accordingly allowed.

4. The facts are not too elaborate and briefly stated is that it is following the grant of "no objection certificate" by the District Magistrate, Sheikhpura under rule 103 of "the Rules" with due communication to the Controller of Explosives that the petitioner was granted licence in Form LE-3, a copy of which is placed at Annexure-1 to the writ petition. A complaint was made against the petitioner regarding the misuse of his licence. An enquiry was conducted by the Additional Collector, Sheikhpura reporting violations by the petitioner. The petitioner was directed to show cause as against the cancellation of the licence by the Senior Deputy Collector vide notice No. 430 dated 29.10.2011. While it is the stand of the petitioner that the show cause notice was received by him belatedly, it is the stand of the respondents that the petitioner did not choose to respond to the show cause.

5. Be that as it may, the District Magistrate, Sheikhpura considering the circumstances and upon consideration of the enquiry report, has vide impugned order bearing Memo No. 442 dated 19.11.2011 recalled the "no objection certificate" issued in favour of the petitioner and communicated the same to the Deputy Chief Controller of Explosives for taking necessary follow up action. It is in these background that the explosive licence of the petitioner has been cancelled by the Chief Controller of Explosives vide order dated 7.3.2012 impugned at Annexure-8 to I.A. No. 4716 of 2014 and being aggrieved the petitioner is before this Court.

6. Although Mr. Ranjan has raised several issues to question the proceedings but in my opinion this writ petition is fit to be allowed on a limited ground that the proceedings was held in violation of rule 115 of "the Rules" read with rule 103(1) and (2) thereof as well as for violation of principles of natural justice.

7. Whereas rule 103 of "the Rules" vests exclusive jurisdiction in the District Magistrate to issue a "no objection certificate" on an application so filed by an applicant, rule 115 vests jurisdiction in the issuing authority i.e. the District Magistrate or any authority superior to him to cancel the same. The power is not absolute rather has to be exercised in a reasonable manner by giving a reasonable opportunity of being heard to the alleged defaulter. Rule 115 of "the Rules" runs thus:

"115. Cancellation of no objection certificate.- (1) No objection certificate granted under rule 103, may be cancelled by the authority issuing the same or authority superior to it, if such authority is satisfied, that-

(a) the licensee has ceased to have any right for the lawful possession over the

licensed premises;

(b) the licensee is convicted and sentenced for any criminal offence or ordered to execute under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974), a bond for keeping peace for good behaviour;

(c) 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.

(2) The authority issuing the no objection certificate or the District Magistrate or the State Government cancelling no objection certificate shall record, in writing, the reasons for such cancellation and shall immediately furnish to the licensee and the licensing authority concerned, copy of the order cancelling the no objection certificate and the reason for such cancellation.

(3) In case an appeal is made against the cancellation of no objection certificate, the appellate authority may consult, if so desired, the Chief Controller."

8. Reverting to the proceedings it is manifest that although a stand has been taken by the District Magistrate, Sheikhpura that the enquiry which is the foundation for the impugned action was conducted at his instance but then the follow up action has not been in tune with the procedure provided under rule 115 of "the Rules" which vests exclusive jurisdiction in the District Magistrate or an authority superior to him to cancel a "no objection certificate".

9. Annexure-2 is a show cause notice issued by the Senior Deputy Collector requiring the petitioner to respond to the allegations made in the enquiry report which stood enclosed. This show cause notice was not responded to by the petitioner as per the respondents. The petitioner states that it was received by him belatedly. In my opinion even if the same would have been received by him, the petitioner was under no obligation to respond to the notice issued by the Senior Deputy Collector who is a stranger to the authorization vested under rule 115 of "the Rules". The show cause notice does not reflect at any place that it had been issued following a direction issued by the Collector. The illegality does not stop here and is perpetuated when the Collector simply proceeds on the basis of the enquiry report and upon non-receipt of the reply by the petitioner to recall the "no objection certificate", completely oblivious to the obligation cast upon him under the proviso to rule 115 which mandates him to give a reasonable opportunity of being heard to the alleged defaulter. Neither the counter affidavit nor the impugned order does reflect that any such opportunity of hearing was granted by the Collector, Sheikhpura to the petitioner before the impugned order was passed.

10. Apparently the proceedings have been conducted in gross violation of the prescribed procedure as well as in violation of the principles of natural justice for neither the show cause notice has been issued by the District Magistrate, Sheikhpura nor the District Magistrate has given a reasonable opportunity of

hearing to the petitioner before passing the impugned order as mandated under proviso to rule 115 of "the Rules".

11. For the reasons aforementioned the order passed by the Collector, Sheikhpura bearing Memo No. 442 dated 19.11.2011 impugned at Annexure-4 cannot be upheld and is accordingly set aside. Since the order of cancellation of licence passed by the Chief Controller of Explosives impugned at Annexure-8 is only as a consequence of recall of "no objection certificate" hence the same also cannot be upheld and is accordingly set aside.

12. The writ petition is allowed.

13. This order, however, would not preclude the District Magistrate, Sheikhpura to proceed afresh but in accordance with law.