

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14181 of 2011

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.THAKER

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil
judge?

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HARIBHAI RAMJIBHAI MISTRY (PARMAR) - Petitioner(s)

Versus

JOINT CONTROLLER OF EXPLOSIVESWEST CIRCLE & 2 -

Respondent(s)

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Appearance :

MR JIGAR G GADHAVI for Petitioner(s) : 1,
MR PS CHAMPANERI for Respondent(s) : 1 - 3.
MR YV VAGHELA for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE K.M.THAKER

Date : 29/06/2012

ORAL JUDGMENT

1. The petitioner has taken out present petition
for below mentioned relief:

"9(A)That the Honourable Court may be pleased to
issue writ of mandamus, and/or any other
writ, order or direction quashing and setting
aside the order passed by the respondent

authority dated 28/07/2011 and 08/08/2011
suspending the license of the petitioner
(ANNEXURE-B (Colly))."

2. The facts involved in and giving rise to present petition are that according to the petitioner, respondents No.1 and 2 being the licensing authority competent to issue licence under the Explosives Act, 1884 ('the Act' for short) and the Rules made thereunder, i.e. the Explosives Rules, 2008 ('the Rules' for short), had issued licence to the petitioner for holding, storing and use of explosives, in accordance with provisions under the Act and the Rules. The petitioner has also claimed that the authorities have been renewing the licence from time to time. The petitioner has further claimed that in June 2011, the petitioner, in routine manner, submitted application dated 9.6.2011, requesting the authorities to renew the licence. It is claimed by the petitioner that instead of renewing the licence, respondent authorities informed the petitioner vide communication dated 28.7.2011 that the licence is suspended. The petitioner has alleged that the respondent authorities suspended the licence without issuing show cause notice and without giving any hearing to the petitioner. It is further claimed by the petitioner that subsequently, the petitioner received a communication dated 8.8.2011 from the office of the respondent informing the petitioner that the licence has been suspended with effect from 28.7.2011. The authority also asked the petitioner to show cause as to why the licence should not be cancelled. The petitioner has averred that as per the said communication dated 8.8.2011, licence has been

suspended on the ground that a Criminal Complaint (CR No.I-3223/2009 dated 1.12.2009) is registered at Idar Police Station. In that context, the petitioner has claimed that the said complaint does not contain any reference of, or allegation against, the petitioner and the petitioner is not impleaded as accused or one of the accused persons in the said complaint and that, therefore, there is no basis or justification to suspend petitioner's licence even on the basis of the said complaint. Aggrieved by the said action of the respondents of suspending petitioner's licence with effect from 28.7.2011, the petitioner has taken out present petition.

3. Mr. Gadhvi, learned advocate has appeared for the petitioner. He reiterated the factual background, which is stated in the petition. In light of the said facts, learned advocate for the petitioner has contended that the impugned action of the respondent is ex-facie, arbitrary, unjust and contrary to the provisions under the Act and the Rules. He also submitted that the impugned action is in violation of principles of natural justice. He further submitted that the petitioner requires certain type of explosives, for which the licence has been issued, for the purpose of business activities and that, therefore, the impugned action of the respondents deserves to be set aside. He also submitted that because of the illegal and arbitrary action of the respondents, the petitioner is suffering loss.

3.1 The learned Assistant Solicitor General and learned AGP have opposed the petition contending,

inter-alia, that the action of the respondent authorities is just, legal and proper and in consonance with relevant and applicable provisions under the Act and the Rules. Learned counsel appearing for the respondents have submitted that though learned counsel for the petitioner is partly justified in his submission that his name is not mentioned in the complaint lodged at Idar Police Station. According to the respondent's submissions, the petitioner is, however, not justified in suppressing the other relevant and material factual aspect. Learned counsel appearing for the respondents, while elaborating the said submission, clarified that the said complaint at Idar Police Station is filed against the petitioner's son and that the petitioner's son is one of the partners in the firm, which carries on its business activities using the explosives for which licence was issued (and is now suspended). Learned counsel for the respondents have also submitted that now charge-sheet has been filed in the said case and the petitioner's son is one of the accused.

4. In background of the aforesaid rival submissions, the grievance of the petitioner is required to be considered.

5. So as to appreciate the grievance of the petitioner, it is necessary to take into account the order dated 28.7.2011 passed by respondent No.1. The said order reads thus:

"No:E/WC/GJ/22/90(E14802)

Dated: 28/07/2011

ORDER

In exercise of the powers conferred under Section 6E (3) of the Explosive Act, 1884, read with Rule 118 of the Explosives Rules, 2008; Licence No. E/WC/GJ/22/90)E14802) granted in Form LE-3 under Explosives Rules, 2008 to **SHRI HARIBHAI RAMJIBHAI MISTRY PARMAR, JAI HARI NIVAS, P.O.- KHEDBRAHMA, DIS-SABARKANTHA, Distt., State., Pincode-** FOR POSSESSION FOR Use of Explosives from their Explosives magazine situated at :6, **KHEDBRAHMA, SABARKANTHA, Gujarat** is suspended with immediate effect.

SHRI HARIBHAI RAMJIBHAI MISTRY PARMAR is directed to surrender their Original copy of above licence in the office of **The Dy. Chief Controller of Explosives, Vadodara** immediately as required under Section 6E (9) of the Explosive Act, 1884."

5.1 The said order gives out that it has been passed in exercise of powers conferred under Section 6E(3) of the Act read with Rule 118 of the Rules.

5.2 Therefore, it would be appropriate to take into account the said provisions, i.e. Section 6E(3) of the Explosives Act, 1884 and Rule 118 of the Explosives Rules, 2008, which read thus:

"6E(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 for 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 for 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.

(4) The licensing authority may also revoke a licence on the application of the holder thereof.

(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 therefor 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.

(6) A court convicting the holder of a licence of any offence under this Act or the rules made thereunder may also suspend or revoke a licence:

Provided that if the conviction is set aside on appeal or otherwise, the suspension or revocation shall become void.

(7) An order of suspension or revocation under sub-section (6) may also be made by an appellate court or by the High Court when exercising its powers of revision.

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

(9) On the suspension or revocation of a licence under this section the holder thereof shall without delay surrender the licence to the authority by whom it has been suspended or revoked or to such other authority as may be specified in this behalf in the order of suspension or revocation.

The licensing authority may (i) vary the conditions of a licence, (ii) suspend a licence, (iii) revoke a licence.

An order of suspension or revocation of a licence can also be made (i) by a Convicting court, (ii) by an Appellate Court; (iii) by a High Court when exercising its powers of revision, (iv) by the Central Government.

118. Suspension and revocation or cancellation of licence. -

(1) Every licence granted under these rules shall -

(I) stand cancelled, if -

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

(b) the licensee is convicted and sentenced under any criminal offences 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.

(II) stand cancelled, if no-objection certificate is cancelled by the authority issuing the same or District Magistrate or the State Government in accordance with rule 115.

(III) be liable to be suspended or cancelled by an order of the licensing authority for any contravention of the Act or these rules or of any condition contained in such licence, or by order of the Central Government, if it is satisfied that there are sufficient grounds for doing so:

Provided that before suspending or cancelling a licence under this rule, the holder of the licence shall be given an opportunity of being heard.

(2) The suspension or cancellation shall take effect from the date specified therein.

(3) An order of suspension or revocation of a licence shall be deemed to have been served if sent by post to the address of the licensee entered in the licence.

(4) The suspension of a licence shall not debar the holder of the licence from applying for the renewal.

(5) Notwithstanding anything contained in sub-rule (1), an opportunity of being heard may not be given to the holder of the licence before his licence is suspended or cancelled in cases -

(i) where the licence is suspended by a licensing authority as an interim measure for violation of any of the provisions of the Act or these rules or of any conditions contained in such licence and in his opinion such violation is likely to cause imminent danger to the public:

Provided that where a licence is so

suspended, the licensing authority shall give the holder of the licence an opportunity of being heard before the order of suspension is confirmed; or

(ii) where the licence is suspended or cancelled by the Central Government, if that Government considers that in the public interest or in the interest of the security of the State, such opportunity should not be given.

(6) A licensing authority or the Central Government suspending or cancelling a licence shall record its reason for so doing in writing."

5.3 At this stage, it is necessary to recall that besides the aforesaid order dated 28.7.2011, respondent No.2 also issued another Notice dated 28.7.2011/8.8.2011 (which is a show cause notice) whereby the petitioner is asked to show cause, within 21 days, as to why the licence should not be cancelled.

5.4 In order to consider the submissions by learned counsel for the petitioner, particularly the submission on the ground that the impugned action is in violation of principle of natural justice, it is necessary to take into account the said show cause notice dated 28.7.2011/8.8.2011. The relevant part of the notice reads thus:

"Sir,

Reference No N dated 28/06/2011.

The following violations were observed by an officer during the inspection of the site of the subject licence on **21/06/2011**.

Reference of Supdt of Police vide Ir no. SOG/288/09 dated 18/12/2009 as a case has been registered against the licensee vide CR no. II3223/09 of P.S. Idar. The same has been communicated by DyCCE Memo dated 19/01/2010. Show cause was issued to licensee vide letter dated 03/02/2010. The licensee without submitting reply to this office

show cause notice has submitted renewal application to DyCCE Baroda who called for this office directions vide memo dated 21/06/2011.

In view of the above the subject licence granted to you is suspended as per the provisions of Section 6(E) of Explosives Act, 1884 and Rule 118 of Explosives Rules, 2008, with immediate effect. An order suspending the licence is enclosed herewith.

Please show cause within 21 days from the date of this letter as to why the subject licenses should not be cancelled.

Please comply the order and follow the procedure under Rule 119 of the Explosives Rules, 2008 regarding the disposal of the explosives in your possession.

Please follow the procedure under Rule 121 for appeal.

Receipt of this letter may please be acknowledged."

5.5 It transpires from perusal of the said Notice that the petitioner is asked to show cause as to why licence should not be cancelled.

5.6 Meaning thereby, the impugned action of suspending the licence is only an interlocutory / interim measure.

5.7 The said interlocutory / interim measure appears to have been taken by the authorities so as to arrest possibility of misuse of the explosives and/or abuse of the licence.

5.8 From plain reading of the provision, it becomes clear that the legislature has conferred power on the authority to pass appropriate order and direction and take necessary actions, including interim measures so as to avoid or to arrest or to regulate misuse or abuse of licence. Having regard to the sensitive nature of the items for which licence

are issued under the Act and the potential danger to public at large, the legislature has considered it appropriate and necessary to confer power on the authority to take interim measure without giving opportunity of hearing. Such power is expressly conferred under Rule 118(5)(i).

5.9 Learned counsel for the petitioner has not disputed, or rather conceded, the fact that his son is a partner in the firm and his son is one of the accused persons in the complaint lodged at Idar Police Station (with reference to which now the charge-sheet is also filed) and the said charge-sheet is filed in connection with the alleged offence punishable under Sections 5 and 9(b)(1) of the Explosives Act, 1884 and Rules 115, 116 and 162 of the Explosives Rules, 2008.

5.10 On perusal of the notice dated 28.7.2011/8.8.2011, it transpires that prior to the said notice dated 28.7.2011/8.8.2011 and also prior to the impugned order dated 28.7.2011, a notice dated 3.2.2010 was issued calling upon the petitioner to show cause, however, the petitioner ignored said Notice and did not give any reply to the said notice and instead he made application for renewal of licence.

5.11 In view of the said fact (viz. that earlier a show cause notice dated 3.2.2011 was issued however the petitioner neglected the Notice dated 3.2.2010 and did not respond to the said notice), the notice/communication dated 28.7.2011/8.8.2011 came to be issued calling for petitioner's explanation as to

why the licence should not be cancelled and that, therefore, the grievance of the petitioner that any notice or any opportunity before passing the order (suspending the licence as interlocutory measure) dated 28.7.2011 has not been given, is not justified and is contrary to facts. The petitioner cannot take and cannot be permitted to take, advantage of his own fault. After having ignored earlier/previous notice dated 3.2.2010, the petitioner cannot claim, and cannot be heard to claim, that any prior notice was not given.

5.12 Besides this, the above-quoted provisions, i.e. Section 6E(3) and Rule 118, confer powers on the authority to suspend the licence as an interim measure. Sub-Rule (5) of Rule 118 expressly provides that opportunity of hearing may not be given if a licence is suspended as an interim measure.

5.13 In present case, it is clear that licence has been suspended as an interim measure and that too on account of petitioner's conduct, i.e. ignoring the Notice dated 3.2.2010 and not replying the said notice.

5.14 Therefore, petitioner's grievance that the action of the respondent authority is contrary to the provisions under the Act and the Rules, is misconceived and unsustainable.

5.15 Though on earlier occasion, the petitioner was asked, vide Notice dated 3.2.2010 to show cause, it is the petitioner who chose not to reply notice

dated 3.2.2010.

5.16 Therefore, now, when, as an interim measure, the licence is suspended pending the proceedings for cancellation of licence, pursuant to the notice/communication dated 28.7.2011/8.8.2011, the petitioner has rushed with this petition without even giving reply to the Notice dated 8.8.2011 and that, therefore, there is no justification in petitioner's grievance.

6. Besides this, the petition is preferred at an interlocutory stage, i.e. at show cause notice stage and that too without giving reply to the said notice/communication dated 28.7.2011/8.8.2011. Therefore also, the petition does not deserve to be entertained.

7. In view of the foregoing discussion and reason, the petition does not deserve to be entertained and accordingly, it is rejected.

(K.M. Thaker, J.)

Bharat*