

Satyanarayan Vs. State and anr

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Court : Rajasthan Jodhpur

Decided On : Oct-16-2014

Appellant : Satyanarayan

Respondent : State and anr

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR
S.B.Civil Writ Petition No.7098/2014 Satyanarayan V/s.

State of Rajasthan & anr.

Date of Order ::: 16.10.2014 PRESENT HON'BLE Mr.JUSTICE P.K.LOHRA
Mr.N.K.Bohra, for the petitioner.

Mr.L.R.Upadhyay, for the respondents.

Learned counsel for the parties submit that the issue involved in this matter is very short, and therefore, with the consent of the rival parties matter is heard finally at this stage.

By the instant writ petition, petitioner has prayed for quashing order dated 30th September, 2014 (Annex.3) passed by the Police Commissioner, Jodhpur, whereby his licence for sale of explosives bearing No.38/1993 is suspended.

The Police Commissioner, while passing the order impugned, has observed that a case under Sections 5, 9B(i) of the Explosives Act, 1884 (for short, Act of 1884) and Section 286 of the Indian Penal Code is pending against 2 the petitioner.

From the recitals of the order, it is borne out that the Commissioner, while apprehending that licence of explosives is likely to be misused by petitioner, has resorted to take such action.

It appears that the Commissioner has exercised its discretionary powers with a view to curb untoward incident within the area of walled city more particularly visualizing that permitting sale of explosives during Diwali festival may cause annoyance to public at large.

Learned counsel for the petitioner, Mr.N.K.Bohra, has strenuously urged that mere pendency of a criminal case cannot be construed as a valid ground for suspension of licence of explosives because situation is still fluid and until and unless petitioner is convicted for the offence attributed to him by the competent Court his culpability for the alleged offence and other antecedents cannot be adjudged.

Mr.Bohra would contend that being a licence holder, petitioner is well within his rights to earn his livelihood by sale of explosives more particularly on Diwali festival, and therefore, this abrupt impugned action has violated his fundamental right to trade under Article 19(1) (g) of the Constitution of India.

Lastly, Mr.Bohra has argued that impact of the impugned action is direct on his 3 right to earn livelihood, therefore, action has violated his fundamental right enshrined under Article 21 of the Constitution of India.

Per contra, Mr.L.R.Upadhyay, learned counsel for the respondents, has submitted that the impugned order has been passed by the Police Commissioner, Jodhpur in the interest of public at large and looking to the past antecedents of the petitioner there was reasonable apprehension that he is likely to misuse licence of explosives.

Mr.Upadhyay has further submitted that sale of explosives is not a fundamental right of an individual, therefore, no indulgence can be granted to the petitioner.

Lastly, in the alternative, Mr.Upadhyay has submitted that if any indulgence is granted to the petitioner then the petitioner may be asked to furnish requisite undertaking before the licensing authority that he would not misuse the licence during Diwali festival and shall utmost take care about the well being of public at large.

Having heard the learned counsel for the parties, in my considered opinion, the reasons assigned in the impugned order for suspension are per se not tenable and merely on account of pendency of a criminal case cannot be set out a ground for suspension of licence of explosives.

The provisions contained under sub-section (6) of Section 4 6E of the Act of 1884 are also clear, wherein it is envisaged that licence can be suspended if the licence holder is convicted by a Court of law under the Act of 1884.

In this view of the matter mere pendency of a criminal case cannot be a valid ground for suspension of explosive licence as it is not possible to infer capability of the licence holder for the alleged offence.

Division Bench of this Court, while examining the rigor of Section 17 of the Arms Act, 1959 for cancellation of arms licence in Khem Singh V/s.

The State of Rajasthan & ORS.[2005(2) Cr.L.R.(Raj.) 907]., has held that mere pendency of a criminal case cannot confer a ground for cancellation of arms licence in favour of an incumbent.

The Court held in this behalf as under :- 5.

From the reading of the provision it is manifest that the licensing authority may revoke a licence if it deem necessary for the security of the public peace or for public safety.

The power of suspension of Arms licence is necessary concomitant of power of revocation for effective control and regulation as also for the security of the public peace or public safety.

Such a power has to be exercised with great circumspection.

The satisfaction of the authority has to be objective and must be based upon relevant material.

Mere fact that some reports have been lodged against the licence holder is not sufficient for cancelling the licence.

A licence can be revoked u/s.17(3)(b) if the licensing authority deem it necessary for the security of public peace or public safety.

In absence of any finding that cancellation was necessary for public peace or public safety, such an order is liable to be quashed.

In view of law laid down by the Division Bench and provisions contained under sub-section (6) of Section 6E of the Act of 1884 read with Rule 118 of the Explosive Rules 2008, the reasons assigned in the impugned order for suspension of licence of the petitioner cannot be sustained and consequently the impugned order is quashed and set aside.

Before parting, however, in the larger public interest, it is made clear that petitioner shall furnish undertaking before the licensing authority that during subsistence of his licence and during Diwali festival, he would not violate the provisions of the Act of 1884 and shall keep the public interest paramount while vending explosives/fire crackers to the respective consumers. Requisite order, in this behalf, may be passed by the licensing authority after receiving undertaking of the petitioner forthwith.

(P.K.LOHRA).J.

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