

Pankaj Traders Vs. the Deputy Commissioner of Police (Licensing) and anr.

Pankaj Traders Vs. the Deputy Commissioner of Police (Licensing) and anr.

SooperKanoon Citation : sooperkanoon.com/690269

Court : Delhi

Decided On : Oct-14-1993

Reported in : 1993IVAD(Delhi)391; 52(1993)DLT385; 1993(27)DRJ533

Judge : G.C. Mittal and; Dalveer Bhandari, JJ.

Acts : [Constitution of India](#) - Article 14

Appeal No. : Civil Writ Petition No. 499 of 1993

Appellant : Pankaj Traders

Respondent : The Deputy Commissioner of Police (Licensing) and anr.

Advocate for Pet/Ap. : M.G. Dhingra,; Arun Jaitley,; Manmohan,;

Judgement :

Dalveer Bhandari, J.

(1) The petitioner-firm has filed this petition with the prayer that the orders dated 21.10.92 and 13.7.92 issued by respondent no.2 and respondent no. 1 respectively refusing to grant N.O.C. for fireworks license may be quashed by an appropriate writ, order or direction. This court issued show cause notice to the respondents on 29.1.1993.

(2) Petitioner firm is having its business in Sadar Bazar, Delhi. Chapter Vh of Explosives Rules, 1983 framed under the Explosives Act, 1884, empowers the Controller of Explosives, Agra, a Department of Government of India, to grant licenses in different prescribed forms, including Form no.24 to possess and sell limited quantities of fireworks, crackers as well as sparklers.

(3) The applicant for the grant of a new license in Form 24 under Rule 154(4) of the Explosives Rules, 1983 is also required to apply to the Deputy Commissioner of Police (Licensing) for a certificate to the effect that there is no objection to the applicant receiving license for the site proposed and the certificate is required to be submitted to the Licensing Authority. According to the petitioner-firm, the proposed site was inspected but even then the respondents have refused to grant Noc to fireworks license. The petitioner challenged the order dated 13.7.92 of Deputy Commissioner of Police (Licensing)/ Respondent no. 1 before the Lieutenant Governor/Respondent no.2 by way of appeal which was dismissed on 21st October, 1992. According to the petitioner, both the orders of the Deputy Commissioner of Police (Licensing) and of the Lieutenant Governor are illegal, arbitrary, discriminatory and unconstitutional.

(4) The petitioner was discriminated because there are regular fireworks licensees in the same lane in Sadar Bazar, who were granted licenses by the Deputy Commissioner of Police (Licensing) and there was no justification for this discrimination.

(5) The petitioner-firm has submitted that the license in the name of M/s Hukam Chand Ranjit Singh previous licensee was revoked on 18.6.92 because both the partners of the said licensee- firm died one after the other. The petitioner-firm was also managing the fireworks trade of the previous licensee M/s Hukam Chand Ranjit Singh who were owners of the proposed site and who in 1987 gave the aforesaid proposed site to the petitioner-firm on rental basis. The Deputy Commissioner of Police (Licensing) declined to grant license because of the existing security and safety aspect in the locality. The Lieutenant Governor by his order dated 21.10.1992 dismissed the petitioner-

'It is the policy of the Administration not to encourage hazardous trade in congested localities to reduce the threat of damage to life and property. It may be a fact that a license was in existence in the same premises, but that cannot justify grant of Noc for a new license once the old one has been revoked, or has abated on the transfer of occupancy of the premises, if this practice were to be followed, it would not be possible to curb or shift any hazardous trade from any area. The fact that police and fire authorities gave their consent for grant of Noc becomes irrelevant in this view of the matter.'

(6) In the order of the Lieutenant Governor, judgment in the case of Sakhi Mohd vs. State in Cr.R. 387/73 has been considered. In that case, the court allowed the petition because the Competent authority did not disclose the basis of the subjective satisfaction. The facts of that case could not help the petitioner-firm because in the instant case, adequate reasons have been given in the order of the Deputy Commissioner of Police (Licensing) and the Lieutenant Governor for rejecting the appeal.

(7) On the petitioner's submissions on the ground of discrimination, the Chief Controller of Explosive, Agra was restrained from issuing any license whether temporary or regular or renewing any license. However, he was given liberty to proceed to cancel the licenses already granted and take necessary steps as early as possible by the order dated 19.8.93.

(8) During the pendency of the petition, C.M.7371/93 was filed for impleadment of an Association of Shopkeepers who sell fire crackers from Dussehra to two days after Diwali. The application of the applicant Association was allowed on 24th September, 1993.

(9) Additional affidavit of the Deputy Commissioner of Police (Licensing), Police Headquarters, New Delhi was filed in this court. In the affidavit, it is mentioned that the respondent had decided not to encourage hazardous trade in the congested localities to reduce the threat of damage to life and property.

(10) It is further submitted that Mr. Sunder Lal, and Mr. Yash Pal, partners of M/s. Pankaj Traders had applied for a license for possession and sale of fireworks at

shop no.6069/4, Ban Market, Sadar Bazar, Delhi. The said shop is located in highly congested locality of the walled city in area full of other combustible materials. Further Sadar Bazar had been engulfed by devastating fires in the previous years. therefore, considering all factors, including security of the public peace and public safety in the locality, the request of the petitioner M/s Pankaj Traders for grant of no objection certificate was refused.

(11) In the affidavit, the respondent has submitted that for reasons of public safety, as well as taking into consideration the directions of this court, fresh policy has been framed and some mandatory provisions have been introduced this time which shall be followed while granting temporary licenses to possess and sell crackers/fireworks by all concerned.

(12) By circular dated 6.10.93 issued on behalf of Commissioner of Police, Delhi, the business of fireworks has been regulated. The regulations which have been imposed by the circular has been challenged on behalf of the imp leaded respondent i.e. Sadar Bazar Fireworks Association. According to the sn'd writ petition, the new policy is arbitrary, illegal, and unfair because it is violative of Articles 14 and 19 of the Constitution. They are also aggrieved by certain conditions imposed in the circular.

(13) In the circular, it is mentioned that for the reasons of public safety, following provisions have been introduced in the circular:-

I) No license shall be granted in the areas of walled city as well as in the congested markets or places which are frequented by a large number of people. licenses should be granted at a space marked in open areas or parks etc.

II) Temporary licenses for sale of crackers shall not be granted at regular shops selling other commodities.,

III) Sale of crackers/fireworks shall only be allowed in open areas in temporary stalls made of cement/tin sheets as prescribed in the rules.

IV) The distance between the booths/sheds should be 3 metres.

V)The floor area of each booth should not be less than 5 square metres.

VI)The open space around these booths should be 50 metres.

VII)The booths/sheds should not face each other.

VIII)The structure of booth should be made of iron frame and not of cloth.

IX)The roof of the stalls/sheds should also be of tin or asbestos and not of cloth.

X)No oil lamps/gas lamps or naked light or loose electric wiring shall be used in the sheds or within the safety distance of the sheds for the purpose of lighting. Any electrical light, if used, shall be fixed in the wall or ceiling and should not be suspended by flexible wire. Switches should be fixed rigidly near the ceiling and a master switch should be provided for each row of sheds.

XI)The practice of display of fireworks in wooden platforms in front of sheds is hazardous and wrong and shall not be allowed within 50 metres of any shed.

XII)No combustible material such as tent etc. be allowed for erection of the sale counter/shops.

XIII)The fireworks should be kept in sheds of non-inflammable material which is closed and secured so as to prevent unauthorised persons having access thereto.

XIV)The foot-path in front of shops shall not be allowed for laying tables for display and sale of crackers.

XV)No person below 18 years of age and no person who is in a stage of intoxication or of unsound mind, shall be granted license.

XVI)The character and antecedents of the person to whom the temporary license is to be granted should be thoroughly verified.

XVII)While granting temporary license, condition should be imposed for a possession of a fire extinguisher in the shop/shed in proper working order by the license holder.

xviii) Adequate fire safety arrangements shall have to be provided by the shop/shed owner such as keeping drums full of water with few water buckets/sand buckets, etc.

XIX) The use of crackers and smoking should not be allowed near the sale area.'

(14) We have carefully looked into the provisions incorporated in the said circular, and heard learned counsel appearing for the parties. The closer scrutiny of circular clearly reveals that all these provisions have been made for the larger public interest and public safety. It is a matter of common knowledge that every year, very large number of burning accidents take place leading to loss of life and property. The authorities were justified in not permitting anyone to carry on business in the shops in the most congested and densely populated areas of the city. It is a matter of common knowledge that accidents can lead to tremendous loss of life and property. The said circular by no stretch of imagination can be said to be arbitrary, unreasonable, illegal or unfair. The reasonable restrictions which have been imposed on this business primarily with the concern of public safety by the circular, the trade or business in fireworks and crackers has not been stopped. Only this trade has been regulated looking to the public interest and public safety,

(15) We do not find any infirmity in the provisions of the circular and we approve of the same.

(16) We have perused the order of the Deputy Commissioner of Police (Licensing) and that of the Lieutenant Governor dated 13.7.92 and 21.10.92 respectively. The detailed reasons have been given by the Lieutenant Governor in his order dated 21.10.92. We do not find any infirmity in the said order. The writ petition filed by the petitioner-firm is devoid of any merit and is accordingly dismissed. In the peculiar facts and circumstances of this case, we direct the parties to bear their own costs.