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Court : Delhi

Decided On : Sep-14-2011

Judge : Rajiv Sahai Endlaw, J.

Acts : Explosives Rules, 2008 - Rule 83

Appeal No. : W.P.(C) 5321/2011 & CM No.10804/2011 (for stay)

Appellant : Dharmender Kumar

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

Advocate for Def. : Mr. Najmi Waziri; Ms. Neha Kapoor, Advs.

Advocate for Pet/Ap. : Dr. Rakesh Gosain, Adv.

Judgement :

1. The petitioner is aggrieved from the condition imposed for issuance of temporary license for sale of fire crackers at the time of the festivals of Dassehra and Diwali, of the shop with respect to which temporary license is sought, not to have residence above. It is the case of the petitioner that he has been issued such temporary license with respect to Shop No.1401-A, Bazar Gullian, Jama Masjid, Delhi for the last 35 years and cannot now be denied the temporary license.

2. Notice of the petition was issued on the plea of the petitioner that though such a condition was imposed for issuance of temporary license, permanent licenses had been issued with respect to shops with residences above.

3. The counsel for the respondents has invited attention to Rule 83 of the Explosives Rules, 2008 which prohibits the storage in shops of explosives other than inter alia fireworks and requires the shop to be not situated under the upper floor used for the purpose of dwelling. It is further the contention of the counsel for the respondents that the respondents have been insisting upon such condition with respect to temporary as well as permanent licenses. With respect to the instances cited by the petitioner, it is stated that on enquiry some of the licenses issued by the Controller of Explosives have been found to be in contravention of the said condition and the Controller of Explosives has been informed of the same and is likely to take action.

4. The counsel for the petitioner has not been able to controvert the applicability of the Rule 83 (supra). He has however invited attention to Set XI in Schedule V, part 4 to the Rules prescribing the terms and conditions for issuance of a temporary license. It is his contention that the said terms and conditions do not contain any such condition as prescribed in Rule 83. He is however unable to contend that the conditions as prescribed in Set XI alone govern the grant of temporary license. There is nothing to show that Rule 83 (supra) would not be applicable to temporary license.

5. Moreover, the said condition appears to the in the interest of safety and security and has to be interpreted accordingly.

6. As far as the argument of certain others having been wrongfully issued the licenses is concerned, as long as the condition impugned in this petition is found to be legal, merely because it has been violated qua others, would not entitle the petitioner also to a license in contravention of the Rules. The Supreme Court recently in UOI v. M.K. Sarkar (2010) 2 SCC 59 has reiterated that there can be no claim on the basis of negative equality.

7. The counsel for the petitioner has also contended that prior to the framing of the Rules aforesaid, this Court in order dated 30 th September, 2005 in W.P.(C) No.16910/2004 titled Dharmender Kumar v. DCP (Licensing) had rejected the argument of a license being not issuable with respect to a shop for the reason of residences above. He contends that the Rules subsequently framed, could not be in violation of the said judicial verdict.

8. The Rules of 2008 were not before this Court on 30 th September, 2005. I am unable to decipher any legal principles that Rules in contravention of a verdict cannot be framed.

9. Though the counsel for the respondents has stated that action with respect to the others is being taken but if notwithstanding the same, the petitioner desires action to be taken with respect to others issued license wrongful, the petitioner would be at liberty to file a PIL in that respect.

10. There is thus no merit in the petitioner; the same is dismissed; the interim order stand vacated.

No order as to costs.

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