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APHC010551852022

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3604]**
(Special Original Jurisdiction)

WEDNESDAY, THE 4th DAY OF NOVEMBER 2026

PRESENT

THE HONOURABLE SMT JUSTICE SUNITHA GANDHAM

WRIT PETITION NO: 33754/2022

Between:

1. K V MANIKYAMBA, W/O PRASAD, AGED 45 YRS PROPR OF M/S KOLLA BUTCHIRAJU FIRE WORKS , D.N0.13-14-6, I.T.I. ROAD NEW GAJUWAKA, VISAKHAPATNAM.

...PETITIONER

AND

1. THE STATE OF AP, REPRESENTED BY ITS PRINCIPAL SECRETARY (HOME) SECRETARIAT, VELAGAPUDI, AMARAVATHI.
2. THE DIRECTORATE GENERAL OF POLICE CUM APPELLATE AUTHOIRY, D.G.P., OFFICE AT MANGALAGIRI, GUNTUR DISTRICT.
3. THE COMMISSIONER OF POLICE, CUM ADDITIONAL DISTRICT MAGISTRATE METROPOLITAN AREA, VISAKHAPATNAM.
4. THE STATION HOUSE OFFICER S H O, GAJUWAKA, VIAKHAPATNAM.

...RESPONDENT(S):

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to pass an Order to Issue a Writ of Certiorari by Call for the Entire Records pertaining to the Impugned Order passed by the 2nd Respondent Directorate General of Police Cum Appellate Authority at Mangalagiri vide Appeal No.1/2022 R.C.No.1183/LandO-III 2022 dated 10-102022 by Dismissing the Appeal by Confirming the order passed by the Commissioner of Police dt.20-09-

2021 vide M.O.No.10/2021 all are Illegal, Unlawful, Violation of the Prescribed Explosive Rules 2008, Violation of Principles of Natural Justice , Violation of Article 14,19(g),21 of the Constitution of India there by to Quash the Impugned Order Consequently to direct the Respondent No.3 i.e., Commissioner of Police to Issue a N.O.C., to the Petitioner Fire Works Shop in the interest of the justice , Equity, good conscience or otherwise the petitioner will be put to suffer a serious loss and hardship. and to pass

IA NO: 1 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to pass an Order to Dispense with filing of the original impugned order passed by the 2nd respondent vide Appeal No. 1/ 2022 dt 10-10-2022 by permit the petitioner to file the photo copy of the same in the interest of the justice and to pass

IA NO: 2 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to pass an Order to SUSPEND the Order M.O.No.10/2021 dt 20-09¬2021 passed by the 3rd Respondent/Commissioner of Police cum Additional District Magistrate , Visakhapatnam pending Disposal of the Main Writ Petition in the interest of the justice. and to pass

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased pleased to receive the Counter affidavit copies on record by allowing the leave petition in the writ petition in the interest of justice and to pass

Counsel for the Petitioner:

1. R SIVA SAI SWARUP

Counsel for the Respondent(S):

1. GP FOR HOME

The Court made the following:

HON'BLE SMT. JUSTICE SUNITHA GANDHAM

WRIT PETITION No.33754 OF 2022

ORDER:

This Writ Petition is filed challenging the order in M.O. No.10/2021, dated 20.09.2021, passed by the Commissioner of Police-cum-Additional District Magistrate, Visakhapatnam City, cancelling the No Objection Certificate (NOC) issued in respect of her fireworks shop, and the consequential appellate order in Appeal No.1/2022, R.C. No.1183/L&O-III/2022, dated 10.10.2022, passed by the Director General of Police, Andhra Pradesh, whereby the appeal was dismissed and the cancellation was confirmed.

2. As per the version of the petitioner, since 2007, she has been carrying on the business of selling fireworks in the name and style of M/s. Kolla Butchiraju Fire Works at Door No.13-14-6, Kakatiya ITI Road, New Gajuwaka, Visakhapatnam, she obtained NOC and licence in Form LE-5 from the competent authority under the Explosives Rules, 2008, the licence is being renewed and the business is being carried on without any untoward incident, the premises were periodically inspected by the Fire Services authorities and that an NOC was also issued by the Fire Department on 30.05.2022. Further, a newspaper reporter published a false report on 13.10.2017 as she refused to meet an alleged demand for money and basing on that news report, the authorities initiated action, without any proper enquiry, the original order dated 20.09.2021 is passed in contravention of Rule 115 of the Explosives Rules, 2008, and without affording reasonable opportunity of being heard. Further, the appellate authority did not properly consider her appeal, confirmed the order dated 20.09.2021 mechanically, and the measurements and distances recorded by the inspecting officers are not true and correct and the shop is situated at a distance of 550 metres from the licensed premises referred to by the authorities, and the applicable distance requirement is only 15 metres and that the authorities wrongly relied upon a 50-metre requirement.

3. As seen from the record, a joint inspection was conducted on 26.04.2018 by the concerned police, fire and other departmental officials and the inspection report recorded that the fireworks shop is situated amidst automobile shops, lubricant retailers, a petroleum outlet and painting/manufacturing units and further, the officers expressed concern that the location could affect public safety. Thereafter, a notice dated 26.06.2019 is issued to the petitioner calling upon her to show cause why the NOC issued earlier should not be cancelled.

4. The record further shows that the petitioner submitted representations and was afforded an opportunity of personal hearing. At her request, personal hearing is adjourned to 15.07.2020 and 22.07.2020 and the petitioner appeared and made further submissions. Thereafter, on 15.09.2021, the Station House Officer, Gajuwaka Police Station, the concerned law and order and other officials conducted fresh joint inspection and the inspection team examined the site and the objections raised by the petitioner.

5. Having considered the material including the inspection report, and representations of the petitioner, the Commissioner of Police-cum-Additional District Magistrate passed the order dated 20.09.2021 in M.O. No.10/2021 cancelling the NOC. Feeling aggrieved by the said order, the petitioner preferred Appeal No.1 of 2022 before the appellate authority, submitted representation and having considered the material, the Director General of Police dismissed the appeal and confirmed the order of cancellation vide order dated 10.10.2022.

6. Heard Sri R.Siva Sai Swarup, learned counsel for the petitioner and learned Assistant Government Pleader for Home. Perused the material on record.

7. Learned counsel for the petitioner would argue that Rule 115 of the Explosives Rules, 2008 does not permit cancellation of an NOC merely because the locality has developed or because commercial establishments have come up in the neighbourhood, the power under Rule 115(1)(c) can be exercised only when cancellation is absolutely necessary for public peace and safety, the authorities

have not established any violation of the statutory conditions governing the petitioner's shop and have relied upon general apprehensions rather than specific material. Learned counsel further submits that the petitioner had a valid NOC and licence from the year 2007, the premises had been inspected periodically, and that no accident or complaint had ever been reported, the subsequent NOC issued by the Fire Services Department on 30.05.2022 is relied upon to contend that the premises were found suitable by the competent fire authority. It is also argued that the petitioner was not given an effective opportunity to meet the inspection findings and that the appellate authority did not independently consider the grounds raised in the appeal and relied upon the judgments in ***Manoj Mittal v. Union of India and four others***[1]. It is submitted that an NOC cannot be cancelled merely on the basis of an increase in population or a general apprehension of danger, particularly when no specific violation of the statutory rules is established.

8. Per contra, Sri R. Mallikarjuna, learned Assistant Government Pleader for Home argued that the action was not initiated merely on the basis of a newspaper report or a general increase in population, the authorities relied upon the joint inspection reports, the nature of the activities in the surrounding premises, the adjoining service road, the movement of heavy vehicles, the proximity of commercial establishments dealing with potentially inflammable materials and the inadequacy of firefighting equipment at the shop. It is further submitted that the petitioner was given opportunities to submit her explanation and to participate in the personal hearing, her representations were considered and a fresh inspection was conducted and the appellate authority also given an opportunity to appear and to submit written representation.

9. As per the version of the petitioner, the proceedings originated from a newspaper report dated 13.10.2017, however, the respondents, rely upon the subsequent joint inspection and the notices issued to the petitioner. Even if the

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newspaper report prompted the authorities to examine the safety of the premises, the legality of the impugned action must be tested on the material actually collected during the statutory process and not on the newspaper report by itself.

10. Record further reveals that the authorities did not proceed to cancel the NOC basing on the newspaper report only. A joint inspection is conducted on 26.04.2018 and a show-cause notice dated 26.06.2019 is issued, the petitioner submitted representations and was given an opportunity of personal hearing and having considered her objections, a further joint inspection was conducted on 15.09.2021 and finally, the impugned order dated 20.09.2021 is passed cancelling the licence. These circumstances are relevant to decide the issue that whether the action was taken mechanically or without enquiry.

11. The fact that the shop had been functioning for several years without an accident is a relevant circumstance in favour of the petitioner and at the same time, the absence of a past accident cannot, by itself, conclude the question whether continuation of the activity at the same location has become unsafe due to subsequent changes in the surrounding area or deficiencies noticed during inspection. Preventive safety measures are intended to avert an accident and as such, the authorities need not wait for an accident to occur before taking action where the statutory threshold is otherwise satisfied.

12. The inspection report dated 15.09.2021 assumes significance as the same is submitted after considering the representations and objections of the petitioner. The report does not merely state that the locality has become populated and it refers to the service road adjoining the premises, the proximity of the shop to the service road, movement of heavy vehicles and lorries, the presence of automobile and lubricant shops and other commercial establishments in the vicinity, and the inadequacy of firefighting equipment at the shop. These are specific issues which are to be examined while considering the safety of a premises where fireworks are stored and sold.

13. At the same time, the authority must not treat the mere existence of shops, traffic or commercial activity in the neighbourhood as sufficient, by itself, to cancel an NOC. The statutory test under Rule 115(1)(c) is more exacting. The authority must reach a reasoned satisfaction that cancellation is absolutely necessary for public peace and safety. The inspection findings must therefore be read together and assessed for their cumulative effect. In the present case, the report refers not only to the surrounding establishments and traffic but also to the immediate access conditions and the insufficiency of firefighting appliances and the authorities considered these circumstances cumulatively and concluded that the location is not suitable for continuation of the fireworks shop.

14. As per Rule 86 deals with safety distances. Under Rule 86(3), a shop licensed for storage and sale of fireworks is required to be at a minimum distance of fifteen metres from premises used for storage of similar explosives, flammable or hazardous materials. Rule 86(1) and (2) separately deal with factories or magazines and storehouses. The applicable distance must therefore be identified with reference to the nature of the premises and the activity concerned.

15. As per Rule 115 is directly relevant to the present case. Under Rule 115(1), an NOC granted under Rule 103 may be cancelled by the authority issuing it or by an authority superior to it if the authority is satisfied that any of the circumstances specified in clauses (a), (b) or (c) exists. Clause (c) permits cancellation where such cancellation is absolutely necessary for public peace and safety. The proviso to Rule 115(1) mandates that the licensee shall be given a reasonable opportunity of being heard before the NOC is cancelled.

16. As per Rule 115(2) further requires the authority cancelling the NOC to record reasons in writing and immediately furnish a copy of the cancellation order and the reasons to the licensee and the licensing authority concerned. Rule 115(3) enables the appellate authority, when an appeal is preferred against cancellation, to consult the Chief Controller of Explosives, if it so desires. The requirement of

written reasons is substantive. It enables the affected person to understand the basis of the decision and facilitates effective appellate and judicial review.

17. In this regard, it is to be noted that the petitioner also disputes the measurements recorded in the inspection report and asserts that the distance from the petrol bunk or other premises was wrongly stated. The record contains differing assertions regarding the distance, including the petitioner's claim that the relevant premises are about 550 metres away and the inspection material referring to a distance of about 300 metres. The exact distance under Rule 86(3) must be measured from the relevant premises used for storage of similar explosives, flammable or hazardous materials. A petrol outlet or an automobile or lubricant establishment cannot be treated as prohibited neighbouring premises merely by its name; the authority must have material to show the nature of the activity or storage and the applicable distance. However, the impugned action is not founded solely upon an alleged breach of the fifteen-metre distance under Rule 86(3). It is also founded upon the wider public-safety assessment under Rule 115(1)(c).

18. The petitioner's reliance upon ***Manoj Mittal*** (supra) requires consideration. In that case, the Allahabad High Court set aside the cancellation of an NOC and licence where the action was based mainly on the fact that the shop was situated in a densely populated area, and no violation of the Act or Rules was alleged or established. The Court noticed that population growth, by itself, was not a statutory ground for cancellation in the circumstances of that case.

19. The principle in ***Manoj Mittal*** (supra) is that the authorities cannot cancel an NOC on the sole basis of a general apprehension arising from population density, without identifying a statutory basis and relevant material. That principle is binding as a persuasive statement of law and deserves due consideration. However, the facts recorded in the present case are distinguishable. Here, the authorities relied upon a site inspection which recorded several specific safety-related circumstances, including the adjoining service road, heavy vehicle movement, the

surrounding commercial activities and inadequate firefighting appliances. The action is stated to have been taken under the express power conferred by Rule 115(1)(c), which specifically refers to the necessity of cancellation for public peace and safety. Therefore, the decision in ***Manoj Mittal (supra)*** does not lay down that an NOC can never be cancelled where a fireworks shop has been functioning for a long period or where no accident has occurred. Its application depends upon the material and reasons forming the basis of cancellation.

20. The next contention relates to violation of the principles of natural justice. The record indicates that a show-cause notice was issued on 26.06.2019. The petitioner submitted representations. A personal hearing fixed on 15.07.2020 was adjourned at her request to 22.07.2020, and she was heard on the adjourned date. Thereafter, a fresh joint inspection was conducted on 15.09.2021. The petitioner was also called upon to appear before the appellate authority on 06.10.2022, appeared and submitted a written representation. The appellate order was passed on 10.10.2022. In these circumstances, the contention that no opportunity whatsoever was given cannot be accepted.

21. The requirement of a reasonable opportunity under Rule 115 does not invariably require a formal oral hearing on every occasion or an opportunity to cross-examine the members of an inspection team. What is required is a fair opportunity to know the substance of the case against the licensee and to place an effective explanation before the competent authority. The petitioner was issued notice, submitted representations, participated in the personal hearing and raised objections which were followed by a further inspection. The appellate authority also afforded an opportunity to submit a representation. On the material available, the procedure adopted cannot be held to be a complete denial of natural justice.

22. The appellate authority was required to independently examine the grounds raised by the petitioner. The appellate order refers to the petitioner’s objections, the earlier and subsequent inspections, the findings of the inspection team and the

public-safety concerns. It also considers the petitioner's contention regarding the surrounding establishments and the distance from the service road and other premises. The appellate authority ultimately concluded that the cancellation was justified in the circumstances. Though a more elaborate discussion would have been desirable, the order, read as a whole, discloses the basis on which the appeal was rejected. It cannot be said that the appellate authority merely dismissed the appeal without considering the record.

23. The petitioner's contention that the NOC had been granted and renewed from time to time does not create an indefeasible right to continue the business at the same premises irrespective of subsequent safety conditions. A licence or NOC is always subject to the governing statute and Rules. If, on relevant material, the competent authority reaches the satisfaction required by Rule 115(1)(c), it is empowered to cancel the NOC after following the prescribed procedure. The long-standing nature of the business is a relevant factor, but it cannot override the paramount requirement of public safety.

24. The right to carry on trade or business under Article 19(1)(g) is subject to reasonable restrictions in the interests specified in Article 19(6). Regulation of the location and operation of a fireworks shop, where necessary to protect human life and public safety, is a legitimate regulatory measure. Such regulation must, of course, be based on relevant material and exercised in accordance with law. In the present case, the impugned orders are founded upon inspection material and the statutory power under Rule 115(1)(c). Therefore, the action cannot be characterised as an arbitrary restriction merely because it affects the petitioner's business.

25. This Court is conscious that cancellation of an NOC has serious consequences for the petitioner, who claims to have carried on the business since 2007. However, the Court exercising jurisdiction under Article 226 does not sit as an appellate authority to substitute its own assessment of technical and local

safety conditions for that of the competent statutory authority, unless the decision is shown to be arbitrary, perverse, based on irrelevant considerations or contrary to the statute. On the material placed, the petitioner has not established such a ground warranting interference.

26. It is, however, clarified that this Court is not recording a finding that every automobile shop, lubricant shop, service road or commercial establishment in the vicinity automatically renders a fireworks shop impermissible. Nor is this Court holding that the fifteen-metre requirement under Rule 86(3) can be dispensed with. The competent authorities remain bound to apply the correct statutory distance requirement to the relevant category of premises and to base any future action on objective material. The present conclusion is confined to the facts and inspection findings forming the basis of the impugned orders.

27. This Court is of the view that the cancellation was preceded by notice, consideration of the petitioner's representations, personal hearing and a further joint inspection. The authorities relied upon site-specific safety findings and exercised the power under Rule 115(1)(c) of the Explosives Rules, 2008. The decision is not shown to have been based solely on the increase in population or on a general apprehension unsupported by inspection material.

28. As per the version of the petitioner, the fire services department had issued NOC dated 30.05.2022 and the said certificate is a relevant document, which cannot be ignored. However, it is issued after passing impugned order dated 20.09.2021. It does not, by itself, establish that the findings recorded in the joint inspection dated 15.09.2021 were incorrect or that the NOC cancellation was unlawful on the date on which it is made. Further, a certificate issued by the Fire Services Department has to be considered within the scope of the functions and matters examined by that Department. It does not automatically displace the statutory satisfaction to be formed by the authority competent under Rule 115**.** So, this Court is of the considered view that this matter may be remanded to the

appellate authority to consider the NOC dated 30.05.2022 issued by the Fire Services Department, give one more opportunity to the petitioners and decide the matter afresh, to meet ends of justice.

29. **In the result,** this writ petition is disposed of, remanding the matter to the appellate authority to decide the matter afresh after considering the submissions of the petitioner together with the Fire Services NOC dated 30.05.2022 and any other material demonstrating compliance with the Explosives Rules, 2008. The appellate authority shall consider the same independently, in accordance with law, and without being influenced by any observation in this order beyond the findings necessary for disposal of the present writ petition.

As a sequel thereto, pending miscellaneous applications, if any, shall stand closed.

SUNITHA GANDHAM, J

Date:04.11.2026
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