



2024:KER:51660

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C. JAYACHANDRAN

FRIDAY, THE 14TH DAY OF JUNE 2024 / 24TH JYAISHTA, 1946

WP(C) NO. 29874 OF 2023

PETITIONER:

SOMAN T N ,
AGED 66 YEARS
SON OF NEELAKANDAPILLA,
THEKKEDATH HOUSE,
VAYATTUPARAMBA P.O.,
VELLAD VILLAGE,
THALIPARAMBA TALUK,
KANNUR DISTRICT, PIN - 670582

BY ADVS.
P.M.ZIRAJ
IRFAN ZIRAJ

RESPONDENTS:

- 1 ADDITIONAL DISTRICT MAGISTRATE,
DISTRICT COLLECTOR OFFICE,
COLLECTORATE RD, THAVAKKARA,
KANNUR, KERALA, PIN - 670002
- 2 THE DISTRICT COLLECTOR,
DISTRICT COLLECTOR OFFICE,
COLLECTORATE RD, THAVAKKARA,
KANNUR, KERALA, PIN - 670002
- 3 DISTRICT POLICE CHIEF,
OFFICE OF THE DISTRICT POLICE CHIEF OF POLICE,
TALAP, KANNUR, PIN - 670002
- 4 REGIONAL FIRE OFFICER,
FIRE AND RESCUE SERVICES,
NEAR PRABHATH JUNCTION, H.Q.
HOSPITAL P.O, KANNUR DISTRICT, PIN - 670017
- 5 THAHASILDHAR,
TALIPARAMBA TALUK OFFICE,
THALIPARAMBA, KANNUR DISTRICT, KERALA, PIN - 670141
- 6 THE VILLAGE OFFICER,
VELLAD VILLAGE, KANNUR DISTRICT, PIN - 670571
- 7 NADUVIL GRAMA PANCHAYATH,
NADUVIL P.O, KANNUR DISTRICT
REPRESENTED BY ITS SECRETARY, PIN - 670582
- 8 THE SECRETARY,
NADUVIL GRAMA PANCHAYATH,
NADUVIL P.O, KANNUR DISTRICT, PIN - 670582



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**BY ADVS.
T.R.HARIKUMAR
ARJUN RAGHAVAN(K/1277/2012)
T.P.RAMACHANDRAN(R-726)
AJITH VISWANATHAN, GOVERNMENT PLEADER**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 14.06.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**



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"C.R."

J U D G M E N T

Dated this the 14th day of June, 2024

Petitioner is aggrieved by Ext.P9 order of the 1st respondent-Additional District Magistrate, which refused the petitioner's application to enhance the quantity of explosives, which he is licensed to store, vide Ext.P1, from 25 kilograms to 100 kilograms. Ext.P9 was issued on the basis of Exts.P6 and P7 documents, as per which, the District Police Chief, as also, the Panchayat have refused to issue 'No Objection Certificate' in enhancing the quantity of explosives to be stored, as sought for by the petitioner.

2. Heard the learned counsel for the petitioner and the learned Government Pleader appearing on behalf of the respondents.



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3. The learned counsel for the petitioner would submit that in view of Rule 103(3)(b) of the Explosives Rules, 2008, there is no requirement of notice to the public for objection. Therefore, 'No Objection Certificate' from the Police Chief, as also, the Panchayat are not warranted as per law. The rejection of petitioner's request vide Ext.P9 solely relying on the refusal on the part of the District Police Chief and the Panchayat to issue 'No Objection Certificate' cannot therefore be sustained, is the submission made.

4. In answer to the same, the learned Government Pleader would submit that the public interest should necessarily be considered, inasmuch as the enhancement sought for is substantial, that is to say, from 25 kilograms to 100 kilograms. The concern of the nearby residents has to be addressed and the District Magistrate has the



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power to address the issue. In exercise of that power, the District Magistrate may call for report/No Objection Certificate from authorities like District Police Chief, Panchayat etc., not because such 'No Objection Certificate' is a *sine qua non*, but in exercise of the powers of the District Magistrate to ascertain facts before issuing necessary permit/licence. On such premise, the learned Government Pleader would submit to sustain Ext.P9.

5. Having heard the learned counsel appearing for the respective parties, this Court, on the one hand would endorse the submission of the learned counsel for the petitioner as regards the illegality/infirmary sought to be attached to Ext.P9; and would, on the other hand, also recognize the power of the District Magistrate to consider all attendant facts and circumstances,



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while enhancing the quantity of the explosives to be stocked. Rule 103(3) of the Explosives Rules, 2008 is extracted here below:

"103. Procedure to be observed for issue of no objection certificate and for grant of licence- (1) The applicant desiring to obtain a licence from the Chief Controller or Controller, shall apply to the District Magistrate or the Director General of Mines Safety with copies of the site plan showing the location of the premises proposed to be licensed for issue of a certificate to the effect that there is no objection to the applicant receiving licence for the site proposed.

(2) The District Magistrate shall be the authority to issue the certificate referred to in sub-rule (1) if the area of the proposed site does not come under the Indian Mines Act, 1952 (35 of 1952) and the Director General of Mines Safety shall be such authority if the area of the proposed site is for ANFO, Liquid Oxygen Explosives or SME and comes under the Indian Mines Act, 1952.

(3) The District Magistrate on receipt of application referred in sub-rule (1), shall make verification of the



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antecedents of the applicant, lawful possession of the site, genuineness of the purpose, interest of public and any other verifications or enquiries as may be specifically required by the licensing authority to be carried out, if any, and on any other matter as deemed necessary.

(a) For verification of the interest of public, the District Magistrate shall forthwith cause a notice to be published calling upon the public to submit objections, if any, with reasons thereof, within a period of one month from the date of publication of the notice and specifying the date, time and place for consideration of objections by him. Where the site of the proposed premises lies within 1.5 kilometers of the limits of the jurisdiction of any town planning municipal authority or port or air port or satellite or space craft launching station or similar establishments of national importance, the District Magistrate shall cause the notice to be served to such authority or establishment. The day of hearing for consideration of objections shall be fixed as early as possible, after the expiration of the period of one month from the date of publication of notice. On receipt of objection, the District Magistrate shall call the person or



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persons raising objection and also the applicant, giving not less than seven clear days before the day fixed for hearing for consideration of the objection. On the day fixed for the hearing or any day to which such hearing may be adjourned from time to time, the District Magistrate shall hear any objection relating to the purpose of no objection certificate and shall make such enquiry, as he may deem necessary to assess justification of such objection.

(b) If the quantity of explosives does not exceed one hundred kilograms or in case of ANFO or Liquid Oxygen Explosives or SME or transport of explosives in a road van, the notice for public for objection as stated in clause (a) shall not be necessary.

6. From the above extracted portion, it could be seen that, what has been done away with by Rule 103(3)(b) is a notice to the public for objection as required in clause (a), if the quantity of explosive does not exceed 100 kilograms. Other factors which are liable to be considered under



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Rule 103(3) should necessarily be considered by the District Magistrate before grant of a licence/permit for storing explosives. The following aspects are liable to be considered by the District Magistrate as per Rule 103(3) of the Explosives Rules, 2008:

- (1) The antecedents of the applicant.
- (2) The lawful possession of the site.
- (3) Genuineness of the purpose.
- (4) Interest of public.
- (5) Any other verifications or enquiries as may be specifically required by the licensing authorities to be carried out.
- (6) Any other matter has deemed necessary.

(underlined for emphasis)

In so far as interest of the public is concerned, clauses (a) and (b) to Rule 103 (3) will govern. Rule 103 (3) (a) provides for the manner in which



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verification of public interest has to be ascertained and Rule 103 (3) (b) obviates with the necessity to issue notice to the public for objection, if the quantity of explosives does not exceed 100 kilograms. However, the basic requirements in terms of Rule 103(3) still survives even in a case where the quantity of explosives does not exceed 100 kilograms. In this regard, this Court may emphasise on the expression *'any other matter as deemed necessary'*. The safety of the nearby residents is certainly a matter, which squarely comes within the ambit of that expression *'a matter which is deemed necessary'*, or a matter which is relevant and significant to be enquired. Rule 107, which also speaks of *'making such enquiry'* fortifies the above view.



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7. Now the question is, if licence has already been granted for storing explosives up to a quantity of 25 kilograms, whether these aspects which have already been ascertained, is liable to be re-ascertained, if the quantity to be stored is sought to be enhanced to 100 kilograms. The answer which occurs to the mind of this Court is only in the affirmative. The petitioner is seeking three times enhancement as regards the quantity to be stored. He was only permitted, vide Ext.P1, to store 25 kilograms, which is now sought to be enhanced to 100 kilograms. The parameters of enquiry for storing 25 kilograms cannot be said to be similar and the same, as the parameters for an enquiry for storing 100 kilograms. Therefore, the contention that, once a licence is issued to store explosives, the same is liable to be enhanced without any further enquiry by the District Magistrate, cannot be countenanced.



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8. However, inasmuch as, a 'No Objection Certificate' from the Panchayat, or for that matter of the District Police Chief, is not specifically contemplated, and inasmuch as the rejection of the petitioner's request vide Ext.P9 is solely based on such refusal to issue 'No Objection Certificate', Ext.P9 cannot be sustained. In the circumstances, Ext.P9 will stand quashed. The 1st respondent-Additional District Magistrate will address the issue afresh and shall pass appropriate orders in the light of the relevant statutory provisions and also the observations contained in this judgment, within a period of one month from the date of receipt of a copy of this judgment. The petitioner will produce a copy of this judgment before the 1st respondent, for compliance.



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The writ petition is disposed of as above.

Sd/-
C. JAYACHANDRAN
JUDGE

SSS



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APPENDIX OF WP(C) 29874/2023

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE RENEWED EXPLOSIVE LICENCE ISSUED BY THE FIRST RESPONDENT TO THE PETITIONER DATED 31.3.2022
- Exhibit P2 TRUE COPY OF THE FORWARDING LETTER DATED 4.6.2022 ISSUED BY THE SECOND RESPONDENT TO THE RESPONDENTS 3 TO 5 & 8
- Exhibit P3 TRUE COPY OF THE COMMUNICATION ISSUED BY THE SIXTH RESPONDENT TO THE FIFTH RESPONDENT DATED 26.8.2022
- Exhibit P4 TRUE COPY OF THE RECOMMENDATION FOR NO OBJECTION CERTIFICATE ISSUED BY THE FIFTH RESPONDENT TO THE SECOND RESPONDENT DATED 20.10.2022
- Exhibit P5 TRUE COPY OF THE NO OBJECTION CERTIFICATE DATED 27.9.2022 ISSUED BY THE FOURTH RESPONDENT
- Exhibit P6 TRUE COPY OF THE COMMUNICATION DATED 11.8.2022 ISSUED BY THE THIRD RESPONDENT TO THE FIRST RESPONDENT
- Exhibit P7 TRUE COPY OF THE COMMUNICATION DATED 2.9.2022 ISSUED BY THE EIGHTH RESPONDENT TO THE FIRST RESPONDENT
- Exhibit P8 TRUE COPY OF THE PROPOSED SKETCH OF THE PLACE IN WHERE THE EXPLOSIVES INTENDED TO STORE BY THE PETITIONER SUBMITTED ALONG WITH THE APPLICATION
- Exhibit P9 TRUE COPY OF THE ORDER DATED 5.5.2023 ISSUED BY THE FIRST RESPONDENT