



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6<sup>TH</sup> DAY OF NOVEMBER, 2023

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BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

WRIT PETITION NO. 24195 OF 2023 (GM-RES)

**BETWEEN:**

SMT. KALAVATHI  
W/O MANJUNATHA M.,  
AGED ABOUT 44 YEARS  
R/AT NO.35, HARIPRIYA NILAYA  
VEERENAHALLI VILLAGE  
VIRGONAGAR POST  
BIDARHALLI HOBLI  
BENGALURU EAST TALUK  
BENGALURU – 560 049.

...PETITIONER

(BY SRI SHARATH S.GOWDA, ADVOCATE)

**AND:**

1. DIRECTOR GENERAL AND  
INSPECTOR GENERAL OF POLICE  
KARNATAKA STATE POLICE HEAD QUARTERS  
NO. 2, NRUPATUNGA ROAD  
BENGALURU – 560 001.
2. THE SUPERINTENDENT OF POLICE  
BANGALORE DISTRICT  
NO.5, MILLERS ROAD  
BENGALURU – 560 052.





3. DEPUTY SUPERINTENDENT OF POLICE  
HOSKOTE SUB-DIVISION  
HOSKOTE - 562 114.
  
4. AVALAHALLI POLICE STATION  
NH75, VIRGONAGAR POST OFFICE  
AVAALAHALLI, BIDARAHALLI  
UTTARAHALLI HOBLI  
BENGALURU - 560 049  
REP. BY STATION HOUSE OFFICER.
  
5. DEPUTY COMMISSIONER  
BENGALURU URBAN  
K.G.ROAD  
BEHIND KANDAYA BHAVAN  
BENGALURU - 560 009.
  
6. THE TAHSILDAR  
BENGALURU EAST TALUK  
K.R.PURA, BENGALURU - 560 036.
  
7. REVENUE INSPECTOR  
BIDARAHALLI HOBLI  
BIDARAHALLI NADAKACHERI  
BANGALORE EAST TALUK  
BENGALURU - 560 049.
  
8. THE CHIEF CONTROLLER OF EXPLOSIVES  
PETROLEUM AND EXPLOSIVES SAFETY  
ORGANZATION, 2<sup>ND</sup> FLOOR, CITY CENTRE,  
OPPOSITE TO HOTEL ROOPA,  
BALMATTA ROAD,  
MANGALURU - 575 001.

...RESPONDENTS

(BY SRI K.S.HARISH, GOVT. ADVOCATE FOR R1 TO R7;  
SRI H.SHANTHI BHUSHAN, DSGI, FOR R8)



THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DTD 25.10.2023 PASSED BY THE R5, DISTRICT MAGISTRATE / DEPUTY COMMISSIONER IN NO.MAG(5)/CRACKERS/CR/137/2022-23, VIDE ANNEXURE-A AND ETC.,

THIS WRIT PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

The petitioner – proprietor of a business is before this Court seeking quashment of an order dated 25.10.2023 passed by respondent No.5 – Deputy Commissioner and a direction by issuance of the writ in the nature of *mandamus* restraining the respondents – authorities from interfering with the petitioner’s business of sale of fire crackers, during the subsistence of valid license at the schedule premises.

2. Heard Sri Sharath S. Gowda, learned counsel for petitioner, Sri K.S.Harish, learned Additional Government Advocate for respondent Nos.1 to 7 and Sri H. Shanthi Bhushan, learned Deputy Solicitor General of India representing respondent No.8.



3. The petitioner claims to be a recipient of license of a premises in survey Nos.44/1 and 44/2 in Veerenahalli Main Road, Bidarahalli Hobli, Bengaluru East Taluk. It is her further claim that he has secured No Objection from all quarters in terms of Rules 101 and 102 of the Explosives Rules, 2008 (for short 'the Rules'). The petitioner later applies for license under Section 105 of the Rules for a changed premises. The Deputy Commissioner appears to have directed securing No Objection from all the concerned departments. After conducting spot inspection, the license was granted in favour of the petitioner. An untoward incident takes place on 07.10.2023 in a fire cracker godown at Attibele village, Anekal Taluk, Bengaluru. Based upon the said incident, several licenses come to be cancelled, one of which is that of the petitioner. It is this action that has driven the petitioner to this Court in the subject petition.

4. Learned counsel appearing for the petitioner contends that before cancellation of license, no opportunity of hearing is afforded to the petitioner. While granting permission or issuing NOC all the necessary inspection and precautionary measures



were checked and found to be present in the premises of the petitioner. He would submit that merely because an untoward incident happens on 07.10.2023, every license holder is punished.

5. Sri Shanthi Bhushan H., learned Deputy Solicitor General of India representing respondent No.8 was directed to accept notice and was further directed to cause an inspection of the property of the petitioner. The Deputy Solicitor General of India through the Controller of Explosives has undertaken the inspection of the premises of the petitioner and filed his report. The report projects the following lacunae:

*"Licence No.Licensed in LE-5:MAGA(5) CR/137/2022-2023  
Valid upto 31.08.2028.  
Date of Inspection 05.11.2023*

***Fireworks shop may be allowed to operate with following conditions***

- 1. Stock registered shall be maintained.***
- 2. Two numbers of fire extinguishers (DCP Type – 10 Kg each) along with two numbers of sand buckets and water buckets shall be provided in the premises.***



3. ***Fireworks shop shall have area within 9 sq. M to 25 sq.M in accordance to rule 83(2) of Explosives Rules 2008.***
4. ***Fireworks shop granted by authorities other than Controller of Explosives shall be Schedule IV Part 1 Point 5(b).***
5. ***Fireworks shop granted by District Magistrate / Deputy Commissioner / Commissioner of Police shall grant license accomplishing suitable plan.***

*Please refer Rule 112 of Explosives Rules 2008 "Every licence except the licences granted for a specific period not exceeding one year, shall be renewable for a maximum period of five financial years ending on the 31<sup>st</sup> March."*

*(Emphasis added)*

The report further indicates that if the lacunae projected in the report is set right, permission can be granted. The learned DSGI would submit that the issue is that the very license issued is contrary to law. It is his contention that the Deputy Commissioner has granted licence to store and sell fireworks/crackers not exceeding 1000 kgs. which power is unavailable to the Deputy Commissioner.

6. The learned Government Advocate appearing for the State though would seek to justify that the license is issued by the Deputy Commissioner but would admit that the license granted is contrary to law.



7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

8. The petitioner is the proprietor of a business vending fireworks, holding a fire cracker license, granted by the Deputy Commissioner, Bengaluru District. It is a permanent license to possess and sell from the shop, not exceeding 1000 Kgs. of manufactured fireworks/sparklers. Whether the Deputy Commissioner/District Magistrate is empowered to grant such license is what is required to be noticed.

9. Grant of license and its cancellation is dealt with under the provisions of the Act and the Rules framed under the Act. Chapter VII of the Rules which deals with grant of licences reads as follows:

**"SPECIAL PROVISIONS FOR POSSESSION, SALE  
AND USE OF EXPLOSIVES**

XXXX

**85. Special precautions to be observed for fireworks**



**(1) Subject to other provisions of this rule, fireworks shall not be placed or kept a shop window used for display of goods.**

**(2) Fireworks in the shop shall be kept in a spark proof receptacle, or the original outer packet in which they were received if that package is effectively sealed and in good order and condition.**

**(3) A receptacle or package containing fireworks shall be kept in a position away from and clear of shop traffic to be separated from all articles of a flammable or combustible nature.**

**(4) Where a package containing fireworks is opened for sale, the fireworks shall immediately be placed in a clean, dust free and spark proof receptacle."**

Clause 5 of Schedule IV of the Rules 89 which deals with licenses and licensing authorities, reads as follows:

**"SCHEDULE IV  
Part 1  
(Refer rule 99)  
LICENCES AND LICENSING AUTHORITIES**

"5 (a)	<i>Licence to possess and sell from a shop, at any one time, not exceeding 25 kilogrammes of small arms nitro-compound</i>	LE-5	<i>District Magistrate</i>
(b)	<b>Licence to possess and sell from a shop, at any one time, not exceeding 100 kilogrammes of manufactured fireworks of Class 7, Division 2, subdivision 2; and 500 kilogrammes of [Chorsa] crackers or sparklers</b>	<b>LE-5</b>	<b>District Magistrate</b>
(c)	<i>Licence to possess and sell from a shop, at any one time, not exceeding 2000 numbers of pyrotechnic device explosives of Class 6</i>	LE-5	<i>District Magistrate</i>



	<i>Division 1</i>		
(d)	<i>Licence to possess for use Gunpowder not exceeding 5 kilogrammes and safety fuse not exceeding 50 metres in the States of Bihar, West Bengal, Kerala and Tamil Nadu</i>	<i>LE-5</i>	<i>District Magistrate</i>
(e)	<i>Licence to possess for use of small arms nitro-compound not exceeding 5 kilogrammes in the State of Kerala</i>	<i>LE-5</i>	<i>District Magistrate</i>
(f)	<b><i>Licence to possess and sell from a shop manufactured fireworks of Class 7 Division 2 sub-division 2 exceeding 100 kilogrammes but not exceeding 300 kilogrammes, and [Chorsa] crackers or sparklers exceeding 500 kilogrammes but not exceeding 1200 kilogrammes</i></b>	<b><i>LE-5</i></b>	<b><i>Controller of Explosives"</i></b>

*(Emphasis added)*

In terms of Clause 5 of Schedule IV, an application for grant of license for fireworks/crackers/sparklers to the tune of 500 kgs. is with the Deputy Commissioner – District Magistrate and between 500 to 1200 kgs., is with the Controller of Explosives. A perusal at the subject license would indicate it being granted to store and sell 1000 kgs., which power the Deputy Commissioner, on the face of it, did not possess. Therefore, the license granted is contrary to law.



10. There are huge number of cases filed on identical cause of action. It is a matter of surprise as to how the Deputy Commissioner has granted licence left, right and center, exercising power under the Explosives Act *qua* the quantity, without having such power. Therefore, the Deputy Commissioners' henceforth shall hold their hands in granting licences beyond 600 kgs of storage and selling of fireworks/crackers/sparklers, failing which they would be held accountable for any mishap. What has emerged now due to the illegal grant of licence by the Deputy Commissioner is, a place which can store only 600 kgs. is now permitted to store 1000 kgs., they are storage of fireworks or sparklers. It is trite that '***a spark neglected can burn the house***'. Therefore, it is high time that caution is exercised by the State, in grant of indiscriminate licenses.

11. The petitioner has only applied for a licence. He has been granted such licence contrary to law. I find no fault with the petitioner. The situation now is, the petitioner cannot for the ensuing festival take a fresh license from the Competent Authority, be it the Deputy Commissioner or the Controller of



Explosives. To redeem this situation, I deem it appropriate to restrict this license for a storage upto 600 Kgs. of fireworks/sparklers, which the Deputy Commissioner is empowered to grant. This remedy is rendered, as a one off situation, as the festival is ensuing in the next two or three days.

12. Insofar as the safety measures, in the vending area are concerned, the lacunae forms the part of the report as afore-quoted. Therefore, the petitioner is given liberty to set right all the lacunae and commence the business.

13. In the aforesaid circumstance, I deem it appropriate to direct the following:

- a. Application for storing fireworks i.e., crackers or sparklers less than 600 kgs. shall only be considered by the Deputy Commissioner, beyond 600 kgs. the Deputy Commissioner shall not venture into grant of licence.
- b. Every licensee shall maintain safe distance as is depicted under the Act from the storehouses to any residential premises or any place of inhabitants.



- c. Adequate number of fire extinguishers of adequate kilograms, shall find place in any storehouses/shops, where crackers/fire workers or sparklers are stored and sold.
- d. Buckets of water as is necessary under the Rules shall also be a part of the storehouse.
- e. It would be the responsibility of the officers of the State Government to randomly inspect and take appropriate action against those licensees of the storehouses/shops, if they would find any violations of the terms of licence or any safety measures, on a case to case basis.

14. Learned counsel for the petitioner submits that if the premises is unlocked, the aforesaid lacunae as indicated in the inspection report would be attended to, and corrected forthwith.

15. For the aforesaid reasons, the following:

**ORDER**

- a. The Writ Petition is disposed.



- b. The State – respondent No.7 shall forthwith unlock the premises and permit the petitioner to correct the lacunae that is found in the inspection report and as noted *supra*, within 24 hours from now.
- c. A compliance report shall be placed before the State Government by the petitioner once the corrective measures are taken and completed and only after that, the State Government shall permit the petitioner to continue the business of selling the crackers in the said premises.
- d. It is made clear that the business would commence after the compliance report being submitted before the State Government and its acceptance by them.
- e. This order is apart from corrections of the lacunae indicated in the inspection report.

**Sd/-  
JUDGE**