

The Indian Fireworks Manufacturers Association (TIFMA) Vs The Union of India

Court: Madras High Court (Madurai Bench)

Date of Decision: April 28, 2014

Acts Referred: Explosives Act, 1884 â€” Section 18(1), 5, 5(1), 5(2), 5(2)(d)

Citation: (2014) WritLR 1061

Hon'ble Judges: V.M. Velumani, J; V. Ramasubramanian, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

V. Ramasubramanian, J.

The Indian Fireworks Manufacturers Association, which is an Association of manufacturers of explosives,

including fireworks and which is registered under the provisions of the Tamil Nadu Societies Registration Act, 1975, have come up with the above

writ petition challenging a set of instructions/guidelines issued by the Chief Controller of Explosives, dated 23.11.2012. We have heard Mr. A.

Sivaji, learned counsel for the petitioner and Mr. K. Senthilvelan, learned Assistant Solicitor General for the respondents.

2. On 05.09.2012, a series of explosions occurred at the premises of a fireworks manufactory, by name ""M/s. Om Sakthi Fireworks Industries"" at

Sivakasi, between 11.30 a.m. and 01.15 p.m., resulting in the death of 40 persons and injury to 29 persons. Immediately, in exercise of the

powers conferred under Section 9-A of the Explosives Act, 1884, the Government of India, issued an order dated 12.09.2012, appointing one

Shri Chaitanya Prasad, I.A.S., Controller General of Patents, Designs & Trademarks as Inquiry Officer to hold an inquiry into the causes and

circumstances leading to the accident. Three more persons, one of whom is a retired Chief Controller of Explosives, another, a visiting professor of

the National Law School of India University, Bangalore and the third, the Director General, National Safety Council, were also appointed to act as

Assessors. One of them was a technical expert in the field of explosives, another was an expert in legal forensics and the third was an expert in

safety.

3. The terms of Reference of the Inquiry were:

- (i) To determine the immediate and proximate cause for the fire accident;
- (ii) To determine the circumstances and sequence of events Leading to the said accident;
- (iii) To determine the statutory, administrative and procedural shortcomings, which led to the occurrence of this accident; and
- (iv) To suggest remedial measures to prevent reoccurrence of such incidents.

4. The Committee conducted its inquiry in four rounds of sittings at various places, including Sivakasi. Public Notices were issued on 05.10.2012

about the inquiry, the terms of reference and the recording of evidence.

5. During the pendency of the Inquiry by the said Committee, the Chief Controller of Explosives, issued a Circular, dated 23.11.2012, listing out

about 10 Primary Safety Measures, to be followed by the fireworks manufacturing factories. Contending that these safety measures are actually

unworkable and unviable and contending that without amendment to the Rules, such instructions and Circulars could not be issued, the petitioner

Association gave a representation to the 2nd respondent, on 24.12.2012. Thereafter, they have come up with the above writ petition, challenging

the above Circular.

6. On 08.02.2013, the writ petition came up for the first time before a learned Single Judge for orders as to admission. The learned Judge ordered

notice, returnable by 12.03.2013. On 12.03.2013, the Assistant Solicitor General sought time to file counter. Therefore, the learned Judge gave

time to the respondents to file a counter within three weeks. In the meantime, the learned Judge granted an interim order not to suspend the existing

licences of the manufacturers, for non compliance with the impugned Circular. A further direction was issued to the respondents to process even

the applications for renewal of licences, without holding against the applicants any failure to comply with the requirements stipulated in the

impugned Circular.

7. When the writ petition was pending before the learned Judge, a public interest litigation came to be filed, praying for the grant of various reliefs.

Since the public interest litigation also related to the incident that occurred on 05.09.2012 and also since the prayer in the Public Interest Litigation

was for enforcing strict safety measures, we directed this writ petition also to be listed along with the public interest litigation. There was one more

reason as to why this writ petition was taken-up before the Division Bench. It appears that another Association by name the Tamil Nadu

Fireworks and Amorges Manufacturers" Association had filed a similar writ petition in W.P. No. 7524 of 2013 on the file of Principal Bench of

this Court challenging the very same circular dated 23.11.2012. The said writ petition was dismissed by a learned Judge and the petitioner in that

writ petition has gone on appeal to a Division Bench, before the Principal Bench. Therefore, there was no point in making this writ petition go

through the same formality of being heard by another learned Single Judge, when it had to land up eventually before the Division Bench, in view of

the order passed in the other writ petition.

8. Mr. A. Sivaji, learned counsel for the petitioner contended that the impugned Circular issued by the 2nd respondent is ultra vires the Act and the

Rules and that therefore it cannot be enforced. He also contended that once the Government of India had constituted a Committee headed by Shri

Chaitanya Prasad, on 12.09.2012 and when the Committee is already in the process of making its recommendations, the 2nd respondent could

not have usurped jurisdiction to issue a Circular. The third contention of the learned counsel for the petitioner is that once the members of the

Petitioner Association carry out additions, alterations, modifications in their respective factories, in accordance with the impugned Circular, there is

no guarantee that they will not be asked to re-do the whole thing, after a report is submitted by the Inquiry Committee, headed by Shri Chaitanya

Prasad. It appears that Shri Chaitanya Prasad Committee has submitted its Report to the Government, during the pendency of the writ petition.

Therefore, the learned counsel for the petitioner submitted that unless the Government takes a categorical stand about the possibility of

implementation of those recommendations, it will be unjust to require the manufacturers to carry out alterations and modifications, repeatedly.

Moreover, it is his contention that some of the measures indicated in the impugned Circular are completely unworkable and unviable and that they

will result in the very closure of the industries.

9. In order to test the validity of the above conditions, it is necessary first to have a look at the measures suggested by the 2nd respondent in the

impugned Circular. The impugned Circular contains about 10 measures that are to be taken by the manufacturers. They are as follows:

1. There shall be smooth pathway inter connecting mixing, filling, manufacturing sheds, drying platforms, transit sheds and burning pits making way

for smooth movement of chemicals, intermediates, semi-finished, finished fireworks and wastes in light weight trolley, having rubber lined wheels

and for the passage of workers the said pathways shall be of at least 1.5 mt. wide with smooth surface from the ground level. Necessary approvals

of the layout of the pathways may be obtained from the licensing authority by submitting drawings. No new approval, grant of licence, amendment,

endorsement etc will be considered without providing the above facilities.

2. The fencing provided at minimum safety distance required from the working sheds, drying platform etc., shall be fully secured and strengthened

by providing chain link fencing or compound wall so as to prevent entry of unauthorized persons into the factory area in any circumstances. The

condition No. 28 of Set. II attached with the licence in Form LE. 1 shall be fully complied with.

3. As per condition No. 19 of Set. II attached with the licence in Form LE-1, for every 20 Nos. of process buildings, one certified foreman is

required. This provision should be strictly enforced and if not complying, action towards suspension/stop-manufacturing will be taken. All licensees

shall make safety management plan of their factory including names of all foremen appointed and the delegation of supervision to the inspecting

authority before 31.3.2013.

4. The details of the fireworks items with chemicals and compositions undertaken for manufacturing in each fireworks factory shall be filed with the

inspecting office as well as the licensing office. This information may be submitted before 31st December, 2012 failing which permission for

operation beyond the date will not be granted.

5. If aerial fireworks items involving pellets and conventional fireworks items are manufactured in the same factory, the facilities for the manufacture

of aerial items shall be separated by a distance of 45 mts. from the rest of the working sheds. All the process buildings for aerial fireworks shall

have 18 mts. inter safety distance. The sheds if any falling within 45 mts. from aerial item process buildings, shall be removed. Necessary revised

layout approval may be obtained from the licensing authority.

6. Since the manufacturing of fireworks licensed by Jt. Chief Controller of Explosives is for only limited quantity of explosives/fireworks and limited

number of sheds, permission/licence for manufacture of aerial item will not be granted for such factories.

7. Dangerous practices like exceeding Man Limits in the manufacturing sheds or mixing sheds or filling sheds and excess storages of semi-finished

materials as well as pellets, usage of safety distance in between sheds for manufacturing/storage of fireworks or semi-finished items or drying of

firework items are observed, stringent action will be taken including cancellation of the licence.

8. There shall not be any iron tools or implements for any operation/manufacture of the fireworks in manufacturing places and all iron implements

including the rings for "chorsa/Thukada" shall be removed.

9. The licensee and the employee shall be conversant with the procedure to be observed during the emergency within the premises.

10. All licensees are advised to provide:--

- a. Non static type cotton cloths for the workers, who work in the mixing/filling an pellet making operation.
- b. Static discharge plates with efficient earthing points at all entrances of mixing/filling and pellet making rooms.
- c. Smooth cemented or anti static flooring for the rooms where mixing/filing or pellet making re done.
- d. Light weight trolleys with rubber lined wheels for movement of chemicals and fireworks goods within the factory.

10. Admittedly, the Committee headed by Shri Chaitanya Prasad, held four rounds of sittings during the period from 22nd October, 2012 to 16th

January, 2013. The Chief Controller of Explosives, who is the 2nd respondent herein, was present on all the occasions. Based upon the in-puts

that they received, the Inquiry Committee submitted its Report on.....The Report is divided into 12 Chapters, which are as follows:

- (1) Executive Summary
- (2) The appointment of Inquiry Officer, terms of the reference, mode of inquiry and inquiry by other agencies.
- (3) History of Fireworks Industry in India.
- (4) Over all view of Fireworks Production.
- (5) Evolution and provisions of important Legislations relevant for Safety in Fireworks.
- (6) Details regarding the accident.
- (7) The circumstances and sequence of events leading to the accident.
- (8) General causes of accidents in Fireworks Manufacturing.
- (9) Establishment and Working of PESO in relation to Fireworks.
- (10) International Best Practices in Fireworks Manufacturing.
- (11) Recommendations; and
- (12) Conclusion.

11. We are primarily concerned in this case with Chapter-11 of the Report, that deals with recommendations. This Chapter-11 itself is further

divided into Five Parts, the first dealing with recommendations relating to licensing, the second dealing with the recommendations relating to

operations, the third dealing with the recommendations relating to monitoring and inspections, the fourth dealing with recommendations relating to

personnel and the fifth dealing with recommendations relating to research and development in Fireworks. For the purpose of deciding this writ

petition, it is enough if we bring on record only such of those recommendations as are relevant for the existing industries. This is in view of the fact

that the Circular, dated 23.11.2012 issued by the Chief Controller of Explosives, which is impugned in the present writ petition, is assailed only by

the existing factories. A person desirous of establishing a new factory, cannot have any grievance, either about the impugned circular or about the

report of Shri Chaitanya Prasad, as any unborn baby is bound by the Rules of the Game that are put in place prior to its birth. Therefore, we will

extract only those recommendations found in the Report of Shri Chaitanya Prasad, that relate to the existing industries. The recommendations

contained in Chapter-11 of the Report of the Inquiry Committee, that relate to existing industries, are as follows:

11.1.2 Product Specialization in Fireworks At present licenses are granted by PESO for manufacture of different categories of fireworks by a

single factory although the safety requirements may vary from category to category.

.....

For existing factories, if they desire to continue to manufacture all the categories that they are manufacturing at present, the areas of manufacture of

each category have to be specifically demarcated and each such area should be self-sufficient and should be separated from the area of any other

category by a minimum of two times the outer safety distance. There should be no inter-mingling of infrastructure and manpower, including foremen

and supervisors for the different categories. The safety requirements for each of the different categories may be developed by PESO and

mandated by legislation Contravention of any of these conditions should be sufficient ground for cancellation of the license.

11.1.3. Minimum standards for foremen/supervisors

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(i) Minimum standards with reference to qualifications, experience etc. may be prescribed for registration of a foreman.

(ii) Initiatives may be taken

by the fireworks industry under the guidance of FRDC to set up training institutions, funded by the industry and monitored by FRDC that would

provide effective vocational courses to workers as well as foremen.

(iii) The foreman may be required to attend a training program every year at the aforementioned institutions. The minimum duration of the course

may also be prescribed in consultation with the industry.

11.1.4 Implementation of a Safety Management Plan

A Safety Management Plan is not mandatory under the Explosives Act and Rules, although an on-site emergency plan is mandatory under the

Factories Act, 1948. It is recommended that:

(i) The provision of a safety management plan may be made mandatory for fireworks industries. The plan may be approved by PESO and/or other

authorities and be implemented in factories, for swift action during emergencies;

(ii) The legislation may be amended suitably to make it compulsory for the licensee to nominate one of the supervisors as the nodal Safety Officer

in each fireworks factory so as to ensure stricter adherence to all safety norms in the factory. For factories with more than 50 sheds, a regular

safety officer should be appointed.

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11.2 RECOMMENDATIONS RELATED TO OPERATIONS

11.2. Leasing and sub-contracting

.....

(i) sub-leasing may be made a penal and a cognizable offence.

(ii) if the Inspecting authority notices an instance of sub-leasing, the said authority may be empowered to suspend the license solely on the ground

of sub-leasing. (iii) Strict provisions may also be enacted to specifically make sub-leasing a ground for such suspension to ensure that the menace

of sub-leasing is eradicated.

11.2.2. Inter-distances between sheds be covered by mounds

....It is recommended that the inter-safety distances between the sheds be covered with earthen mounds that would not only prevent misuse of the

inter-safety distances between the sheds but would also prevent the spread of explosion/fire to other parts of the factory premises. It is learnt that

factories in the United States have mounds in the inter-safety distances. Pathways may be contoured around the mounds to enable movement of

people and raw materials around the premises of the sheds.

The design of the mounds may be specified by PESO and incorporated in the Rules.

11.2.3 Provision for smoothened pathways and use of low-level carts therein

....Smoothened pathways may be used and the use of low-level carts therein may also be made compulsory.

.....

11.2.5 Inter-safety distance between the drying platforms

.... the pellet drying platforms should be located at a distance of atleast 18 m. from any other platform or shed, instead of the currently prescribed

safety distance of 12 m.

11.2.6 Conducive floor

....FRDC may conduct such a study and the results may be incorporated in the present legislation.

11.2.7 Storage of incompatible ingredients

.... ingredient sheds should have a safety distance between one another, which may be specified by PESO and incorporated in the legislation.

11.2.8 Use of concrete tables and benches

.... through legislative provision, concrete tables may be made mandatory in the mixing and filling rooms etc. The concrete tables should have raised

borders so that there may be no spillage. The use of such infrastructure will result in greater safety, since the quantity that can be worked upon by

the workers would be restricted by the size of the table itself. Furthermore, the incidence of damage in an explosion appears to be less likely when

a concrete bench is used, as opposed to wooden tables, which by themselves are combustible. Such tables will also absorb the impact of an

explosion to some extent.

...

11.2.11 Maintenance of records and allocation of batch numbers

...all fireworks packaging carry the respective batch numbers, quantity, net weight, method of making etc. And records of production may be

maintained by the licensee for review by various authorities. The maintenance of log books such as stock registers, purchase registers, issue

registers, indent books, etc. May be made mandatory in order to ensure effective monitoring.

11.2.12 Appropriate labelling of Fireworks

The cautionary labeling on firework products must be prominent and conspicuous on the Principal Display Panel. The label must contain the term

WARNING. (for firecrackers, rockets, and mines) or CAUTION (for non-aerial and non-report items). Further, a Statement of Hazard is

recommended which accurately describes the principal hazard or hazards associated with a particular device. The typical statements of hazard

could include the terms ""Flammable, Explodes, Emits Shower of Sparks, Shoots, Flaming Balls, With Report"" etc. The label should also contain

the particulars of the license to prevent spurious production and sale. The label may also be placed, on all four sides of the package, or on

whichever side the item name appears.

11.2.13 Urgent safety measures:

It is recommended that the following safety measures may be mandatorily enforced in all fireworks factories:

(i) Installation of copper plates outside the sheds - rubbing of hands on the copper plates shall enable dissipation of static body charge. Use of

Cotton clothes by all workers while at the premises of the fireworks factory. (iii) Particulars about Do's and Don'ts must be prominently displayed

in the local language, as per the requirements of the particular process in each factory shed.

11.4 RECOMMENDATIONS RELATED TO PERSONNEL

11.4.1 Welfare of workers in factory

Currently, many firework factories do not provide any incentives made available under the PF and/or ESI, M/s. Om Sakthi Fireworks Industries

was not even registered by the licensee with EPF Organization and only 11 workers were registered the Employees State Insurance Corporation.

It is recommended that, PESO may check this aspect at the time of grant or renewal of license....

12. Having seen the safety measures introduced in the impugned Circular, dated 23.11.2012 and having seen the recommendations of the

Committee head by Shri Chaitanya Prasad, let us now take up the grounds of challenge of the petitioner, one by one.

Circular Ultra vires the Act and the Rules

13. The first contention of the petitioner is that the impugned Circular is ultra vires the Act as well as the Rules.

14. A cursory look at the provisions of the Explosives Act, 1884 would show that Section 5(1) empowers the Central Government to make Rules

to regulate or prohibit the manufacture, possession, use, sale, transport, import and export of explosives, except under and in accordance with the

conditions of a licence granted, as provided by those rules. Sub-section (2) of Section 5 lists out the matters with regard to which the rules may be

made by the Central Government under Section 5(1). One of the matters included under sub-section (2) of Section 5 is the authority by which

licences may be granted. Another matter included in Section 5(2), for which provision may be made in the Rules framed by the Central

Government is "the form in which and the conditions subject to which, licence may be granted." Section 6-B(1) confers power upon the authority

prescribed in the Rules to grant licences, after making such enquiry as it may consider necessary. Section 6-D is of importance and hence it is

extracted as follows:

6-D. Licensing authority competent to impose conditions in addition to prescribed conditions.--

A license granted under section 6-B may contain in addition to prescribed conditions such other conditions as may be considered necessary by the

licensing authority in any particular case.

15. A careful look at Section 5(2)(d) would show that the Rules framed by the Central Government under Section 5(1) may include a rule

prescribing the conditions on which and subject to which, licence may be granted. But, in addition to the rule making power conferred upon the

Central Government under Section 5(1) to prescribe the conditions on which licences can be granted, the statute confers an additional power

under Section 6-D upon the licensing authority to impose additional conditions. As if Section 6-D is not sufficient, the Act goes one step further by

prescribing under Section 6-E(1), power of the licensing authority to vary the conditions subject to which a licence has been granted.

16. A combined reading of Sections 5(2)(d), 5-B(1), 6-D and 6-E(1) would show--(i) that the licensing authority can impose additional conditions

over and above those for which a provision is made by the Central Government in the Rules in respect of factories which apply for the grant of

licence; and (ii) that the licensing authority is empowered even to vary the conditions of a licence in respect of existing factories. Therefore, it is

clear that the Act confers additional powers upon the licensing authority not only to improve upon the normal conditions that are imposed, for the

grant of a licence for the first time, but also to vary the conditions of an existing licensee.

17. In exercise of the powers conferred by Section 18(1) of the Act, the Government of India made the Explosives Rules, 2008. Chapter-III of

the Rules deals with the grant or refusal of approval, no objection certificate, licence, service, management, transfer and renewals. Rule 105

mandates that a person can apply for the grant of licence only after the completion of construction of the premises. But, under Rule 102, a No

Objection Certificate is to be obtained before construction. The licence granted is to be in the Form prescribed by the Rules. Rule 113 gives a

table containing the list of documents that are required for the grant of licence.

18. A licence is granted in Form LE-1, for the manufacture of fireworks or gun powder or both not exceeding 15 kilograms at any one time. A

licence to possess gun powder not exceeding 15 kilograms at one time for manufacture of adirverttus is to be in Form LE-2. The licence to

possess for use, explosives not exceeding 25 kilograms is to be in Form LE-3. All these forms contain a list of conditions, attached.

19. The fact that the 2nd respondent herein is the licensing authority is not disputed. Schedule-IV contains the list of licences and the licensing

authorities with reference to Rule 99 and it shows that the second respondent is the authority for LE-1, a licence to manufacture fireworks or gun

powder or both, exceeding 500 kilograms. He is also the licensing authority for the manufacture of liquid oxygen explosives under Form LE-1 and

for the manufacture of Site Mixed Explosives in Form LE-1.

20. Therefore, it is clear that the forms in which various types of licenses are granted, contain a host of conditions. But nevertheless, the licensing

authority is also conferred with a power, both to impose additional conditions for the grant of a licence and also for varying the existing conditions

in respect of the existing licensees. Hence, the first contention that the impugned circular is ultra vires the Act and ultra vires the Rules cannot be

accepted.

The effect of constitution of the Inquiry Committee on the impugned circular

21. The second contention raised by Mr. A. Sivaji, learned counsel for the petitioner, is that when the Central Government had already constituted,

on 12.09.2012, a Committee headed by Shri Chaitanya Prasad and assisted by experts in the fields of safety, legal forensics and explosives, there

was no need for the 2nd respondent to issue the impugned Circular. According to the petitioner, the 2nd respondent could have waited for the

outcome of the inquiry by Shri Chaitanya Prasad and his recommendations.

22. The third contention of the petitioner actually flows out of the second contention. According to the petitioner, the members of the petitioner

Association will have to modify the existing facilities in their factories in terms of the impugned Circular, dated 23.11.2012. After modification, if

the Central Government implements the recommendations of the Committee headed by Shri Chaitanya Prasad also, the members of the petitioner

Association would be compelled to make another set of modifications, resulting in wasteful expenditure and huge financial loss.

23. We have carefully considered the above submissions.

24. At the outset, it should be pointed out that the power conferred upon the licensing authority under Section 6-D and 6-E(2) was not taken away

by the Central Government by constituting the Committee, headed by Shri Chaitanya Prasad. The power of the licensing authority is actually

statutorily conferred. This cannot be taken away, unless there is an amendment to the statute itself. Therefore, merely because a Committee is

constituted, probably as a knee-jerk reaction, it cannot be contended that the power of the licensing authority is kept under suspended animation.

Therefore, the second contention does not really have a legal basis.

25. The third contention is virtually a cry of hardship. It is true that if different committees make different recommendations at different point of

time, the implementation of the provisions of the Act would actually take a hit. Therefore, in normal circumstances, a direction to implement the

recommendations of the Reports of successive committees would certainly lead to hardship.

26. But, we have already extracted the recommendations made by the Committee headed by Shri Chaitanya Prasad. None of the

recommendations made by the Committee is demonstrated to be completely contrary to the impugned circular. The petitioner is unable to point out

which recommendation of the Committee, headed by Shri Chaitanya Prasad, is contrary to the prescriptions contained in the impugned circular. As

a matter of fact, the writ petition was filed even before the Committee, headed by Shri Chaitanya Prasad, submitted its Report. The petitioner had

the benefit of non-implementation of the impugned circular till the Committee submitted its Report. We find no contradiction or mismatch between

the prescriptions contained in the impugned circular and the recommendations made by the Committee. Therefore, the second and the third

contentions do not have either a legal or factual basis.

Prescriptions unworkable

27. The last contention of the writ petitioner is that some of the prescriptions contained in the impugned circular are unworkable and unviable.

More particularly, the petitioner appears to be aggrieved by Condition No. 1 and Condition No. 5 in the impugned circular.

28. Condition No. 1 in the impugned circular contains a mandate to provide a smooth pathway inter-connecting mixing, filling, manufacturing

sheds, drying platforms, transit sheds and burning pits making way for smooth movement of chemicals. It also shows that the pathways should be

at least 1.5 metres wide with smooth surface from the ground level.

29. We fail to understand as to how the requirement to provide a smooth pathway inter-connecting various sheds and making way for smooth

movement of chemicals could be termed as unworkable.

30. Paragraph 11.2.3 of the Report of the Committee also contains a mandate to provide smooth pathways and the use of low level carts therein.

Therefore, there are no contradictions between the impugned circular and the Report of the Committee, on this aspect.

31. Condition No. 5 prescribed in the impugned circular makes it incumbent upon the factories, manufacturing aerial fireworks items to maintain

facilities for the manufacturing of aerial fireworks, separated by a distance of at least 45 metres from the rest of the working sheds. It also

mandates that all the process buildings for aerial fireworks shall have 18 metres inter safety distance and that the sheds if any falling within 45

metres from aerial item process buildings shall be removed.

32. The above prescription also does not run contrary to what is recommended by the Committee. In paragraph 11.2.5 of the Report of Shri

Chaitanya Prasad, it is recommended that even the pellet drying platforms should be located at a distance of at least 18 metres from any other

platform or shed. The prescription contained in Paragraph 5 of the impugned circular, relates to aerial fireworks items, involving pellets. Therefore,

the prescription that all the process buildings for aerial fireworks shall have 18 metres inter safety distance is in tune with Shri Chaitanya Prasad

Committee's recommendations.

33. The prescription regarding the distance of 45 metres between the facilities for manufacture of aerial items and the rest of the working sheds, is

something that is not found in the Report of Shri Chaitanya Prasad Committee. Therefore, there will be no scope for the members of the petitioner

Association to modify anything as and when the Committee's recommendations are implemented, once they adhere to the impugned circular,

dated 23.11.2012.

34. Rule 86 of the Explosives Rules, 2008, prescribes for a factory/magazine, a store-house and a shop, respectively under sub-rules (1), (2) and

(3), the safety distance to be maintained as prescribed in Schedule-VIII. Scheduled-VIII contains, a total of about 7 tables. Table-1 deals with

safety distances for manufacturing factory, magazine of category "ZZ". Table-2 deals with safety distances for manufacturing factory, magazine of

category "Y". Table-3 deals with safety distances for magazine of category "X". Table-4 prescribes the safety distances to be observed in a factory

for manufacture of sparklers only. Table-5 stipulates the safety distance to be observed in a magazine for storage of sparklers only. Table-6

contains the safety distance to be maintained by various process and storage sheds of fireworks manufacturing factories. Table-7 indicates the

safety distance to be observed in transit building for storage of micro fuse.

35. Similarly, Form DE-2 under Rule 113, contains the distance to be maintained. DE-3 is one of the forms to be attached to the application for

the grant of licence under Rule 113. The prescription under paragraph 5 of the impugned circular, does not go contrary to anything stipulated either

in any of the Tables under Schedule-VIII or in Form DE-2 under Rule 113. Therefore, we do not think that Condition No. 5 is either oppressive

or is of such a nature that it is likely to be modified later on.

Cement pathways

36. One more objection of the petitioner to the impugned circular is that the manufacturers are now called upon to have cement roads and

pathways. Though the impugned Circular does not contain anything about this, the members of the petitioner Association rely upon a condition

imposed in a licence recently granted to one of the members. In a Memorandum dated 12.02.2013, issued by the Deputy Chief Controller of

Explosives to a company by name "Lucky Fireworks", he had called upon the industry to have a smooth cemented pathway. Therefore, the

learned counsel for the petitioner contends that this additional requirement is not to be traced to any of the provisions contained in the Rules.

37. At the outset, we have to point out that the requirement for a smooth pathway is found in paragraph 10.c of the impugned circular. But, the

requirement is actually to have "smooth cemented or anti-static flooring for the rooms where mixing/filling or pellet making are done". Therefore,

what is prescribed in paragraph 10 of the impugned circular is only for the rooms. The smooth cemented or anti-static flooring, prescribed by the

impugned circular, is only for the rooms and not for the pathways. If in respect of an individual manufacturer the 2nd respondent has prescribed

any additional condition, it is for such a manufacturer to take up the issue separately. The additional prescription for a particular industry might have

arisen out of the ground realities prevailing in that area. As we have observed earlier, the Rules framed by the Central Government can indicate the

conditions subject to which licence can be granted. But, at the same time, the power of the licensing authority under Section 6-D to impose

additional conditions in respect of individual cases cannot be belittled.

38. It can be seen from the Explosives Rules, 2008, that the general conditions subject to which various types of licences are granted in Form LE-

1, LE-2, etc., are stipulated in SET-1, SET-2 etc. upto SET-15. These SET-1 to SET-15 are found in Part-IV of Schedule-V to the Explosives

Rules, 2008. They are only general conditions. The requirement under Paragraph 10.c of the impugned circular to have a smooth cemented or

anti-static flooring for the rooms is a special requirement only for mixing or filling or pellet making areas. Therefore, the petitioners cannot object to

the same. If the objection is to the requirement of cement pathway, the same is not to be traced to the impugned circular. Therefore, the additional

contention raised by the petitioner also fails. Therefore, all the objections of the petitioner to the impugned circular are not capable of being

sustained. Hence, the writ petition is dismissed. No costs. Connected miscellaneous petitions are closed.