

SL NO. 14

BEFORE THE NATIONAL GREEN TRIBUNAL

EASTERN ZONA BENCH, KOLKATA

O.A. NO.139 OF 2023 (Former OA No.542/2023)

IN THE MATTER OF

NEWS REPORT PUBLISHED IN THE HINDU DATED 28.08.2023
TITLED EIGHT KILLED IN BLAST AT ILLEGAL FIREWORKS UNIT
IN WEST BENGAL VS. STATE OF WEST BENGAL

APPLICANT

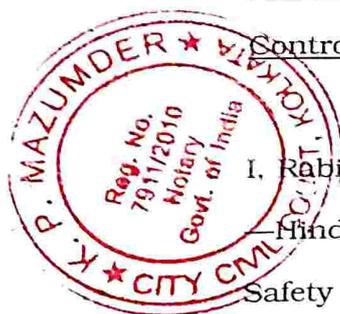
-VERSUS-

Member Secretary, West Bengal Pollution Control Board &
OTHERSS

-RESPONDENT

Counter affidavit filed on behalf of Respondent No.1 (Jt.Chief

Controller of Explosives)



I, Rabindra Jain Biruly, Dy. Controller of Explosive, Years by faith Hindu, by occupation – Service under Petroleum and Explosives Safety Organization under the Ministry of Commerce and Industry, Govt. of India do hereby solemnly affirm and state as follows:-

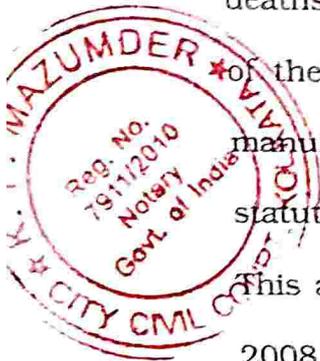
I am serving as Dy. Controller of Explosives and posted in the office of the Joint Chief Controller of Explosives, East Circle, Kolkata, Petroleum & Explosives Safety Organization (PESO), Ministry of Commerce and Industry, Government of India, and I am aware of the facts in the instant case and as such I am competent to make and affirm the instant affidavit.

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That the present affidavit is being filed in compliance of the order dated 31.05.2023 of Hon'ble National Green Tribunal, Eastern Zone Bench, Kolkata in O.A. NO.139 OF 2023 (Former OA No.542/2023)

Details are given chronologically -

The fireworks manufacturing units are mostly prone to fire and explosion owing to hazardous natures of chemicals that are being used for manufacturing of fireworks/crackers. Kindly find Fatal accidents are common in illegal manufacturing as these units make no pretense of complying with statutory requirements for operating with explosives materials. The report of tragic deaths in the recent exposition/accident are gruesome reminder of the danger lurking behind in such illegal cracker/fireworks manufacturing and storage units that do not comply with the statutory provisions laid down under the Explosives Rules, 2008. This amounts to flagrant violation of Rule 7 of Explosives Rules, 2008. The compliance of Hon'ble Supreme Court Judgment dated 23-10-2018 in I.A. No. 6 & 8 of 2016, I.A. Nos. 10, II.80, 176, 69202, 109668, 109720 and 122778 of 20, 17, I.A. Nos. 68888 and 68897 of 2018 in WP(C) to 728 of 2015 in regard to prohibition of use of compounds of Barium/Lithium/Arsenic/Antimony/Lead/Mercury. In addition, the use of strontium chromate in the manufacture of fireworks is prohibited.



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This respondent seeks liberty to file this affidavit, reserving the rights of filing additional affidavit on behalf of Petroleum & Explosives Safety Organization if need so arises. This affidavit is primarily aimed to answer the key issues pertaining to possession and use of explosives within ambit of Explosives Act, 1884 and rules framed there-under.

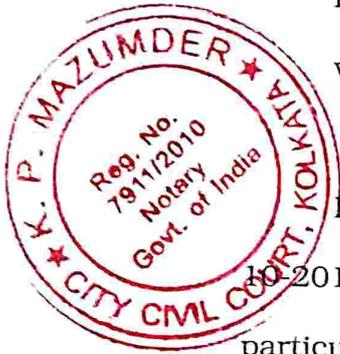
1. That as per power conferred vide Section 6(B) of Explosives Act, 1884 and in pursuance of Rule 7 of Explosives Rules, 2008, the licences are granted for manufacturing, possession, sale, use, transport, import and export of explosives for periodic as mentioned therein along with condition of licence as applicable for the purpose.



2. That as per power conferred vide Section 6(B) of Explosives Act, 1884 and in pursuance of Rule 7 of Explosives Rules, 2008, the District Magistrate is empowered to grant licences in in form LE-1 licence to manufacture fireworks or gunpowder or both not exceeding 15 kgs. and LE-5 for licence to possess and sell from a shop, an any one time, not exceeding 100 kgs of manufactured fireworks of Cl.7,Dvn.2, sub-dvn.2; and 500 kgs of Chinese crackers or sparklers as mentioned therein along with conditions of licence under the Explosives Rules, 2008.

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3. That as per Rule 128 of the Explosives Rules, 2008 read with Explosives Act, 1884 empowers the District Magistrate and all Executive Magistrates subordinate to the District Magistrate, Commissioners of Police or Police Officers of rank not below that of a Sub Inspector of Police within their respective jurisdiction to enter, inspect, search, seize, detain and remove any explosives and also carry out inspection of the magazines located within their jurisdiction once in six months in order to ascertain if there has been any violation of the Act or the rules thereof.



In pursuant to Hon'ble Supreme Court Judgment dated 23-10-2018 vide para 42(XV), all the officials respondents, and particularly the Police, shall ensure that there is no sale of banned fire crackers. In case any violation is found, the Station House Officers (SHO) of the concerned Police Station of the area shall be held personally liable for such violation and this would amount to committing contempt of the Court, for which such SHO(s) would be proceeded against.

Therefore, in pursuant to Rule 130 of Explosives Rules, 2008, whenever any report is made to the District Magistrate by the Chief Controller of Explosives of an infringement of the act or of these rules, the District Magistrate shall take immediate action

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and shall inform the Chief Controller or the Controller, as the case may be, of the action taken by him on such report.

Types of Licenses issued to fire works:

This organization grants the following licences related to fireworks manufacturing factories, storage of fireworks for sale/use in a magazine, sale of fireworks from fireworks shops and Foreman certificates under the Explosives Rules, 2008.



S.No	Licence Form	Purpose
1	LE-1	Licence to manufacture fireworks or gunpowder or both exceeding 15 kilogrammes
2	LE-3	Licence to possess for sale of explosives of Class 7 (Fireworks) in a magazine.
3	LE-3	Licence to possess for use of explosives of Class 7 (Fireworks) in a magazine.
4	LE-5	Licence to possess and sale from a shop manufactured fireworks of class 7, division 2, sub-division 2 exceeding 100 kilograms but not exceeding 300 kilograms and Chinese crackers or sparklers exceeding 500 kilograms but

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		not exceeding 1200 kilograms
5	LE-11	Foreman's Certificate

Maximum No. of sheds allowed in a factory (including Mount walled rooms)

The maximum number of process buildings excluding mixing/filling, transit building and drying platform in a factory shall not exceed 85 as per the condition of the 17 of SET-II of Schedule V of the said rules. The number of buildings provided with mound walls viz, filling/mixing and drying platforms in a fireworks manufacturing factory varies as per the manufacturing requirement.



Amendment of Rules

The principal rule were published in Gazette of India, Extraordinary vide notification number G.S.R. 907(E), dated the 29th December, 2008 and subsequently amended vide notification number G.S.R. 65(E) dated 24th January, 2011 and G.S.R. 772(E), dated the 11th December, 2013.

The G.S.R 17(E) dated 9.1.2019 with respect to the below were amended in the Rules.

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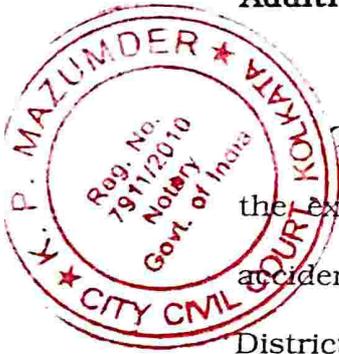
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* (i) Separate licences shall be granted for manufacturing of conventional fireworks and aerial fireworks items.

* (ii) Separation-distance between outer fencings of two fireworks factories shall be at least 200m.

* This will not be applicable to fireworks factories existing or already approved and under construction before publication of these Rules.”.

Additional Information:



The determination of carrying capacity of an area to sustain the extent of such activities having regard to the potential of an accident fully rests with the District Magistrates of the respective District, since District Magistrate is the NOC issuing authority of the district as per Rule 102 of the Explosives Rules, 2008. As such the verification / analyzing the carrying capacity of an area does not come under the purview of this organization. However, the latest amendment vide G.S.R 17(E) dated 9.1.2019 made in the Explosives Rules, 2008 clearly mandates that “**Separation-distance between outer fencings of two fireworks factories shall be at least 200m**” and the same is strictly complied by the new factories which are approved after the amendment of the rules.

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All safety distances required to be kept clear between any licensed factory building, magazines from Dwelling houses, protected works etc are strictly being complied as per the Table 3 to 7 of Schedule VIII of Explosives Rules, 2008



Deponent



Rabindra Jain Biruly
Dy. Controller of Explosives,
East Circle, Kolkata.
रविन्द्र जैन बिर्जू
RABINDRA JAIN BIRULY
उप विस्फोटक नियंत्रक
DY. CONTROLLER OF EXPLOSIVES
पूर्वी अंचल, कोलकाता
EC, Kolkata

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VERIFICATION

Verified at Kolkata, on this day 17th of January, 2024 that the contents of the above Affidavit are true and correct as per official records available with the deponent and to the best of my knowledge and belief. No part of the same is false and nothing material has been concealed there from.


Deponent

Rabindra Jain Biruly
Dy. Controller of Explosives,
East Circle, Kolkata.

रबिन्द्र जैन बिरुली
RABINDRA JAIN BIRULY
उप विस्फोटक नियंत्रक
DY. CONTROLLER OF EXPLOSIVES
पूर्वी अंचल, कोलकाता
EC, Kolkata



Identified by me


Advocate

**Solemnly Affirmed & Declared
Before me on Identification**



K. P. MAZUMDER, NOTARY
City Civil Court, Calcutta
Reg. No. 7911/2010 Govt. of India

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[Handwritten signature]

रविन्द्र जैन बिरुदा
RABINDRA JAIN BIRUD
एच विलेजिस्टिक निचे
DY. CONTROLLER OF E. POSIVES
पूर्व जज, कोलकाता
EC, Kolkata

VAKALATNAMA

Before The National Green Tribunal at Kolkata/F 2

In the _____ at _____
Before Ld _____ Judge _____
Sult/Case No. _____ at 201 _____
Signature

O.A No - 139/2023
In Re - News Report published in the Hindu dated 31/08/2023 titled "Eight killed in blast at illegal fireworks units" -vs- In West Bengal
Plaintiff
Application
Application

Defendant
Opp. Party
Respondent

KNOW ALL MEN by these

that I/We

do hereby in my / our name and my / (our behalf constitute and appoint Sri Ashok PRASAD, ADVOCATE, High Court, Calcutta.
true and lawful Pleader / Advocate & Attorneys to appear and act for me / us in the matter noted above to the suit written statement, conduct suit, appeal from original suit order etc. and for that purpose to do all acts and things, whatsoever in that connection including compromise of the above matter disposing in or withdrawing money from filling or taking out of appeal, document and payment order from Court referring matters in dispute between the parties here to arbitration, withdrawing the above matters with liberty title fresh suit, sending properties released from attachment filling execution or Miscellaneous cases and other petitions, bidding at execution sale, obtaining payment from us our Court. Withdrawing custody and other fees and doing on my / our behalf such other acts in the above matters as are necessary and proper

I / We hereby agreeing to ratify and confirm all acts so done by the said Advocate or Attorneys as my / our own acts and as it done by me / us to all intents and purposes.

Date...17/10/2023

Vakalatnama
Received and accepted
Ashok Prasad
Adv.
9882063404

ADVOCATES— ASHOK PRASAD ADVOCATE