

(2019) 10 PAT CK 0026

In the Patna High Court

Case No : Letters Patent Appeal No. 1800 Of 2018 In Civil Writ Jurisdiction Case No. 627 Of 2017

Dr. Deepak Kumar

APPELLANT

Vs

State Of Bihar Through Home Secretary And Ors

RESPONDENT

Date of Decision : 14-10-2019

Acts Referred:

Arms Rules, 2016 — Rule 12, 25, 25(1)(b)

Citation : (2019) 10 PAT CK 0026

Hon'ble Judges : Amreshwar Pratap Sahi, CJ; Ashutosh Kumar, J

Bench : Division Bench

Advocate : V.N. Pandey, Shweta Pandey, Dr. Anand Kumar

Final Decision : Allowed

Judgement

Re: Interlocutory Application No.01 of 2019.

Heard learned counsel for the parties.

The cause shown is sufficient. The delay is condoned.

The appeal shall be treated to be within time.

Interlocutory Application stands allowed.

Re: Letters Patent Appeal No. 1800 of 2018

A learned Single Judge has dismissed the writ petition on the ground of availability of an alternative remedy of filing an appeal, calling upon the appellant to seek his remedy before the appellate authority, as the licensing authority has refused to grant an arm license to the appellant.

Learned counsel for the appellant contends that the learned Single Judge and the concerned authority have both overlooked the provisions of Rule 25(1) (b) of the Arms Rules, 2016 and have erroneously taken a decision not to grant an arm license for which it is not necessary on the facts of the present case to file an

appeal before the Commissioner.

Learned counsel for the State, however, contends that a remedy of statutory appeal being available, the writ petition has been rightly dismissed on that ground.

We have considered the submissions raised and we find that no doubt, a remedy of statutory appeal is available and could have been availed of by the appellant. Therefore, there cannot be any dispute with the aforesaid proposition, but on the facts of the present case what we find is that the District Magistrate on the basis of a totally erroneous report which is patently in teeth of Rule 25 (1) (b) has proceeded to refuse licence to the appellant and which aspect has also been completely overlooked by the learned Single Judge. The District Magistrate therefore has failed to exercise his jurisdiction in accordance with law and therefore the plea of alternative remedy in our opinion should not be entertained on the facts of the present case.

The father of the appellant Krishna Prasad is a valid fire arms licence holder of a D.B.B.L. gun. Undisputedly, the appellant's father has attained the age of 70 years and he, therefore, nominated his son, the present appellant, and gave a no objection in his favour for grant of licence in his favour who had applied it along with the requisite documents.

Rule 25 of the 2016 Rules is extracted hereinunder:

25. Grant of licences to legal heirs.? (1) The licensing authority may grant a licence ?

(a) after the death of the licensee, to his legal heir; or

(b) in any other case, on the licensee attaining the age of seventy years or on holding the firearm for twenty-five years, whichever is earlier, to any legal heir nominated by him:

Provided that notwithstanding the provisions contained in rule 12 of these rules, the licensing authority may grant a licence to such legal heir if the eligibility conditions under the Act and these rules are fulfilled by the said legal heir and there are no adverse remarks in the police report.

(2) Where a licensee leaves behind more than one legal heir and the legal heirs decide amongst themselves to retain the arm or arms of the deceased, one of the legal heirs nominated by all other legal heirs may apply for a licence under sub-rule (1) along with the following documents, namely:-

(i) a declaration of no-objection from the remaining legal heirs;

(ii) an indemnity bond executed by the applicant giving full details of the licence and the arm or arms endorsed thereupon; and

(iii) a copy of the death certificate of the deceased licensee.

(3) Where the legal heirs decide to dispose of the arm or arms endorsed on the licence of the deceased licensee, they may apply to the licensing authority for grant of a limited period permission to sell the arm or arms, within the time allowed by such authority, to any licensed dealer or to any other person entitled to possess an arm under these rules.

Explanation. ?

For the purposes of this rule, 'legal heir' includes husband, wife, son, daughter, son-in-law, daughter-in-law, brother, sister and grandchildren of the licensee or the deceased licensee."

Rule 25(1) (b) is in respect of those cases where the licensee is alive and having attained the age of 70 years or having held the fire arms for 25 years whichever is earlier can nominate anyone of his legal heirs to possess the said fire arms provided he is granted a licence. This is, therefore, not a case of the death of the licence holder where the heirloom policy would apply. It is here that the District Magistrate relied on an erroneous report of the Circle Officer and the said provision also escaped the notice of the learned Single Judge.

We, therefore, find this to be a case where the order of the District Magistrate refusing to grant licence reflects complete non-application of mind to the rules applicable resulting in exercise of an erroneous jurisdiction. Consequently, the writ petition ought to have been allowed.

We, therefore, allow this appeal set aside the impugned judgement dated 01.11.2018 as also the order passed by the District Magistrate, Patna dated 28th November, 2016 and issue a direction to the authority concerned to proceed to pass a fresh order in the light of the observations made hereinabove within three weeks of the presentation of the certified copy of this order before it.

We were impelled to pass an order for imposing costs on the respondents for having dealt with the matter in such a casual fashion, but on account of the fervent request made by the learned counsel for the State, we refrain from doing so.