(1999) 08 PAT CK 0036

In the Patna High Court

Case No : C.W.J.C. No. 1615 of 1998

Girdhari Prasad Sharma APPELLANT

Vs

Union of India and Another RESPONDENT

Date of Decision : 23-08-1999

Acts Referred:

Citation : (2000) 1 PLJR 533

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : Ashok Kumar Keshri, for the Appellant; Manu Shankar Mishra for the Union of India, for the Respondent

Final Decision : Allowed

Judgement

Aftab Alam, J.—Whether a licence for manufacture of arms issued (in Form IX) under the provisions of the Arms Act, 1959 can be split up on the request made by its joint holders ? This is the question that arises for consideration in this writ petition. According to the respondent authorities, in the light of the industrial policy resolution 1956 and the policy guidelines issued by the Central Government on 8.3.1957 in pursuance of the industrial policy resolution it is impermissible to split up the licence for manufacture of arms and ammunition as it would in effect lead to new licences coming into existence. Before proceeding to examine the validity of the stand taken by the respondent authorities it would be appropriate to take note of the brief facts of the case in the context of which the aforesaid question has arisen. In order to avoid any controversy the basic facts of the case are taken from the counter affidavit filed on behalf of the respondents. In the counter affidavit it is stated that a licence bearing no. 22, dated 21.2.1940 was issued in Form IX under the provisions of the Arms Act, 1878 (since repealed) by the District Magistrate, Munger in favour of one Horil Mistri (the deceased father of the petitioner) who was the sole proprietor of M/s. M. Horil & Co. Munger. After coming into force of the Arms Act, 1959, and the rules framed thereunder with effect from 1.10.1962, the power to issue licence for manufacture of arms and ammunition vested in the Central Govt. and that required a review of the licences issued by the State Licensing authorities under the Act of 1878. After reviewing the case of Horil Mistri, his earlier licence was replaced with a new licence bearing no. 19/IX/78 (in Form IX) with the quota of 234 guns per annum. During the life time of Horil Mistri, the names of his two sons, namely, Shri Lal Sharma (since deceased) and Girdhari Pd. Sharma (the present petitioner) were also endorsed by the Govt. of India in the licence held by M/s. M. Horil & Company in accordance with the Government policy. As a consequence of addition of names the licence of M/s. M. Horil & Company, Munger, stood in the names of three joint proprietors, (i) Horil Mistri, father, (ii) Shri Lal Sharma, and (iii) Girdhari Pd. Sharma (both sons of Horil Mistri). With the passage of time Horil Mistri and one of the two sons, Shri Lal Sharma died and their names were deleted from the licence. Later, on a request made by the sons and heirs of the deceased Shri Lal Sharma, duly forwarded by the State Government, their names were also incorporated as partners in the licence held by the firm, in accordance with the Government policy. After the aforesaid addition, deletion and further addition of names, the present position is that the licence stands in the joint names of Girdhari Pd. Sharma (son of the deceased Horil Mistri, the original licencee) and (i) Devendra Pd. Sharma, (ii) Vijay Sharma, (iii) Gopal Pd. Sharma, (iv) Krishna Murari Sharma, (v) Sikindra Pd. Sharma, (vi) Jitendra Pd. Sharma, (vii) Manish Kumar Sharma, (viii) Gyandeo Pd. Sharma and (ix) Chandan Sharma (all sons of Shri Lal Sharma and grand sons of Horil Mistri) as partners of M/s. M. Horil and Company, Munger.

2. It is further stated in the counter affidavit that in the year, 1986, the petitioners being the joint proprietor of M/s. M. Horil & Company, Munger, represented to the Central Government for bifurcation of the licence no. 19/IX/78 into two equal parts in the names and styles of M/s. M. Horil & Company and M/s. United Small Arms Company. He further requested that each of the two split up licences be given half of the quota of 234 guns per annum fixed for the joint licence. According to the counter affidavit the petitioner''s request was given due consideration by the competent authority "and not found agreeable on the ground that after bifurcation of the licence a new licence will come into existence for all practical purposes and issuance of a fresh licence is not allowed under the existing policy of the Government of India". The petitioner''s request was accordingly rejected and the decision was communicated to him by letter, dated 18.6.1986 (Annexure-B to the counter affidavit).

3. At this stage, I am turn to the writ petition for taking note of the circumstances and the reasons that prompted the petitioner to make the request to split up the joint licence. In the writ petition, it is stated that long before licence no. 19/IX/78 was issued in the year, 1978 under the provisions of the Arms Act, 1959 and even while the earlier licence issued under the Act of 1878 was subsisting, a partition took place between the two sons of Horil Mistri in the year, 1971 and since then out of the total annual quota of 234 B.L. Guns, 117 were being manufactured by Shri Lal Sharma and the balance half by the

petitioner. It is further stated that the two brothers jointly informed the Collector, Munger about the partition and the arrangement under which each of the two brothers would manufacture 117 B.L. guns annually out of the total quota of 234 B.L. guns per annum under the licence. It is further stated that since then both the brothers started manufacturing 117 B.L. guns separately and the guns manufactured by each of the two brothers were used to be sent to Ichhapur Ordnance Factory for testing under transport licence and permit licences issued by the Collector, Munger to each of the two brothers separately. It is also stated that the petitioner filed a suit for confirmation of the partition between the two brothers and for a declaration that each of them would separately manufacture 117 B.L. guns; that the suit was decreed and the civil court made the declaration as prayed for. Further, according to the petitioner, the aforesaid arrangement continued for some time but after a while difficulties started cropping up and it was realised that unless the licence was split up, it would be difficult to carry on smoothly the business of manufacture of guns. It is stated that both the brothers faced difficulties in payments of income tax and sales tax and also in the renewal of the licence. Problems arose as nonpayment of sales tax by one brother caused undue harassment to the other brother even though he had cleared all tax liabilities. It is further stated that in the meanwhile both the brothers obtained two separate factory licences being Licence No. 62814/MGR in the name of the petitioner and Licence No. 4525/MGR in favour of Sri Lal Sharma. The two brothers also obtained separate sales tax numbers. Their father, Horil Mistry died on 18.1.1986 and after his death the problems between the two brothers further aggravated. Later, Shri Lal Sharma died in February, 1991 and this led to his nine sons being substituted in his place as joint holders of the licence. This aggravated the problems still further and made it necessary for the petitioner to request for the splitting up of the licence. According to him, unless the licence was split up the whole business may have to be ultimately closed down for no fault on his part. From the writ petition it appears that he did not receive the letter, dated 18.6.1986 by which his request was turned down. According to him he met the concerned authority in the Central Government in connection with his request, he was asked to send the death certificate of Shri Lal Sharma and a no objection certificate from the heirs and sons of Shri Lal Sharma. As advised by the concerned authority, the petitioner sent the desired certificates on 24.6.1993 but he did not hear any thing on this matter despite reminders sent by him and finally he was compelled to come to this court in this writ petition.

4. The petitioner''s request to split up the licence on the grounds stated by him is quite understandable. In any family venture such problems are very likely to arise with passage of time and with the new generations coming to the fore. In an ordinary business, such problems are usually resolved by the simple device of partition. In case of manufacture of arms, however, the concerned authority is not willing to split up the licence on the grounds that it will in effect amount to a new licence coming into existence.

5. It may be noted that the concerned authority had objection to the addition or

deletion of names in the existing licence as according to the counter affidavit it was in accordance with the Government policy but the bifurcation of the licence though subject to the same terms and conditions and with proportionate reduction in the quota of guns per annum is deemed as issuance of new licence (s) which is said to be imperssible (sic) in terms of the guidelines issued in pursuance of the industrial policy resolution, 1956. The stand taken by the respondents give rise to two questions. First, whether the splitting up of an existing licence subject to the same terms and conditions and with proportionate reduction in the quota of guns can be said to be the same as issuance of new licence(s) within the meaning of the guidelines issued by the Central Government on 8.3.1957. Secondly, whether the prohibition against issuance of fresh licences is so absolute as to override the other conditions and commitments made in the same guidelines?

6. At this stage, it will be appropriate to extract the relevant portions from the guidelines dated 8.3.1957 :

4. In view of Industrial Policy Resolution of 30th April, 1956, the Government of India have decided that there is no objection to the continuance of manufacture of arms and ammunition by the existing units in the private sector who are already licensed for such manufacture, subject to the following conditions :

(a) revolvers, pistols and rifled weapons and ammunition used in such weapons are not to be manufactured,

(b) the strictest security precautions are observed so as to prevent any diversion of the products of such factory to unauthorised hands,

(c) the operations of such units should be strictly restricted to the items already manufactured by them;

(d) no expansion of their activities through widening the range of their production and/or increasing the capacity of the items already produced by them is to be undertaken without the prior sanction of the Government of India; and

(e) the weapons manufactured should be proof tested according to the prescribed regulations as mentioned in para 3 above.

No fresh licences for manufacture of arms and ammunition are to be granted (subject to the decisions in para 2 above and para 5 below). It is requested that at the time of renewing licences for private manufacture a suitable quota should be fixed by the State Government for the items to be manufactured, so that the market is not flooded with such arms and ammunition.

(emphasis added)

7. From the portions under-lined in the above quotation it is clear that though the decision was not to issue fresh licences, there was also a commitment to the continuance of manufacture of arms and ammunition by the existing units in the private sector.

8. The Industrial Policy Resolution of 1956 came up for consideration before the Supreme Court in Ranjit Singh and Others Vs. Union of India (UOI), . Though the cases before the Supreme Court were slightly different on facts and those cases did not relate to the splitting up of an existing licence but arose from reduction of annual quota for the manufacture of guns, some of the observations made in that decision seem to have a hearing on the case in hand. In para 6 of that decision it was observed as follows :

6. The Union of India rests its case on the industrial Policy Resolution of 1956. Under that Resolution, however, it was decided that no objection would be taken to the continuance of the manufacture of arms and ammunition by existing units in the private sector already licensed for such manufacture provided the operation of those units was strictly restricted to the items already manufactured by them and that an expansion of their production or increasing the capacity of the items already produced was undertaken without the prior sanction of the Government of India. Plainly, what was envisaged was a prohibition against an increase in the quota, not its production. Purporting to implement the Industrial Policy Resolution, the Government issued instructions that the quota fixed should be such that the market was not flooded with arms and ammunition. No objection can be raised to that. It is as it should be. But with that primary consideration defining the outer limits, there are other factors which govern the fixation of the actual quota. There is the production capacity of the factory, the quality of guns produced and the economic viability of the unit. The Government is bound to keep these in mind while deciding on the manufacturing quota. There is need to remember that the manufacture of arms has been the business of some of these units for several years and the Industrial Policy Resolution contains a specific commitment to permit the continuance of those factories. On the other side, the Government is entitled to take into consideration the requirements of current administrative policy pertinent to the maintenance of law and order and internal security. Any curtailment of the quota must necessarily proceed on the basis of reason and relevance.

(emphasis added)

In the light of the Supreme Court decision in Ranjit Singh, it appears to me that the prohibition against issuance of new licences has to be weighed against the commitment made to permit continuance of the units in existence from long before. In taking a decision on the question of splitting up of a subsisting licence a balance must be struck between the two considerations in the Industrial Policy Resolution 1956. In case it is found that bifurcation of the licence is necessary for the survival of the unit, the request may be allowed as in that case it will not be same as issuing fresh licences within the meaning of the guidelines dated 8.3.1957.

9. In my considered view the decision of the concerned authority to turn down the petitioner''s request was arrived at without taking into consideration this aspect of the matter and, therefore, I think that the matter requires re-

consideration. I accordingly set aside the decision as contained in the letters dated 18.6.1986 and 20.8.1986 and direct the concerned authority to re-consider the matter in the light of this judgment. The petitioner will be entitled to place before the concerned authority in the Central Government a fresh and complete statement of his case with supporting written materials to enable the Government to reach a fair decision. In the result, this writ petition is allowed with a direction to the respondent Union of India to reconsider the petitioner''s request for splitting up the licence in the name of M/s. Horil & Company, Munger after allowing him a reasonable period to set forth his case on merits with such supporting materials as he may choose to place before the authorities. There will be no order as to costs.

