

(2019) 07 PAT CK 0283

In the Patna High Court

Case No : Letters Patent Appeal No. 1720 Of 2018 In Civil Writ Jurisdiction Case
No. 5579 Of 2017

Maresh Prasad

APPELLANT

Vs

State Of Bihar Through Home Secretary And Ors

RESPONDENT

Date of Decision : 17-07-2019

Acts Referred:

Arms Rules, 1962 — Rule 12, 25
Arms Act, 1959 — Section 13, 14, 14(1)(b)

Citation : (2019) 07 PAT CK 0283

Hon'ble Judges : Amreshwar Pratap Sahi, CJ;Anjana Mishra, J

Bench : Division Bench

Advocate : Deepak Kumar, Hansa Jha, Shweta Pandey, Prabhat Kumar Verma

Final Decision : Allowed

Judgement

I.A. No. 01 of 2019

01.Having heard learned Counsel for the parties, we are satisfied that the delay has been sufficiently explained. The delay condonation application is allowed. The appeal shall be treated to be withing time.

LPA No. 1720 of 2018

2. This Letters Patent Appeal has been filed assailing the impugned judgement dated 29.10.2018 passed in CWJC No. 5579 of 2017 whereby the writ petition filed by the appellant has been dismissed on the ground of alternative remedy with liberty to prefer an appeal before the Commissioner.

3. The background in which we have entertained this special appeal, in spite of the said alternative remedy having been pointed out by the learned Single Judge, is reflected from the long drawn litigative battle that the appellant has been pursing for the grant of an arms licence.

4. The applicant is in the business of Real Estate and Building Construction. In

the year 2009, he applied for the grant of a licence to possess a rifle. In his application he has mentioned that on account of the heavy nature of transactions he has to carry substantial cash with him for which he requires protection. The application was rejected on 8th November, 2012 by the District Magistrate, Patna on the ground that there is no threat perception to the petitioner either on account of any inimical relations or even from terrorists or criminals of the like nature. The order of the District Magistrate was founded on a police report of the Kankarbagh Police Station, Patna which also recited that the applicant has not faced any incident involving crime nor is there any recommendation that the applicant required special protection. The order being short and cryptic is extracted hereinunder:-

"पटना समाहरणालय, पटना।

(जिला- शस्त्र- शाखा)

-: आदेश:-

शस्त्र अनुज्ञप्ति वाद सखं या -09-232/2009 में आवेदक श्री महेश प्रसाद, पिता स्व० राम रतन, सा० रोड न० 2, अशोक नगर, थाना- कंकडबाग, जिला- पटना से प्राप्त एक एन०पी०बोर रायफल अनुज्ञप्ति आवेदन-पत्र पर वरीय पुलिस अधीक्षक पटना से सत्यापन प्रतिवेदन प्राप्त करने की कार्रवाई की गई।

वरीय पुलिस अधीक्षक, पटना द्वारा अपने अधीनस्थ पदाधिकारियों के जाँच प्रतिवेदन के साथ उक्त शस्त्र अनुज्ञप्ति आवेदन-पत्र को अग्रसारित किया गया है साथ ही अनुम डल पुलिस पदाधिकारी, सदर पटना एवं पुलिस निरीक्षक-सह-थानाध्यक्ष, कंकडबाग थाना द्वारा जाँच प्रतिवेदन के आलोक में आवेदित शस्त्र अनुज्ञप्ति आवेदन-पत्र को अनुशासित किया गया है।

थानाध्यक्ष, कंकडबाग थाना, पटना के विस्तृत जाँच प्रतिवेदन का अवलोकन किया गया, जाँच प्रपत्र की कंडिका-10 के क, ख, ग, एवं घ में आवेदक को उग्रवादियों कट्टर पंथी संगठनों अथवा कुख्यात अपराधियों से किसी खतरे का कोई उल्लेख नहीं है, साथ ही उक्त प्रतिवेदन में आवेदक के साथ कभी किसी आपराधिक धटना धटित होने का भी कोई उल्लेख नहीं है, साथ ही किसी विशेष सुरक्षा भय के संबंध में कोई प्रतिवेदन अंकित नहीं है।

शस्त्र अधिनियम 1959, शस्त्र नियम 1962 तथा गृह मंत्रालय, भारत सरकार का पत्र संख्या-V-11016/16/2009-शस्त्र दिनांक 31.03.2010 में निहित निर्देश एवं वरीय पुलिस अधीक्षक, पटना के प्रतिवेदन के आलोक में सम्यक विचारोपरान्त आवेदक श्री महेश प्रसाद का आवेदित एक एन०पी०बोर रायफल अनुज्ञप्ति आवेदन-पत्र को अस्वीकृत किया जाता है। लेखापित एवं संशोधित।

जिला द डायिकारी,

पटना।"

5. The applicant preferred an appeal. In the meantime, amendments were made in the Arms Act and the Rules framed and several pronouncements were made by the High Court. Taking notice of the same and in view of the provisions of Section 13 and 14 of the Arms Act, coupled with the Rules, the appellate authority found that the order has proceeded on erroneous considerations and accordingly set aside the order of the District Magistrate and remanded the matter back to the licensing authority for a decision afresh. The appellate

authority particularly referred to the provisions of Section 14(1) (b) of the Arms Act, 1959 and commented that the same requires an investigation and report whereafter a police report upon assessment of the conduct of the applicant was required before grant of licence. The applicant also applied under the new format and awaited the outcome of the said remand order but to his dismay no response was shown even by the licensing authority and consequently he filed the writ petition giving rise to the present appeal.

6. The petition was originally framed for a mandamus directing the District Magistrate to decide the petitioner's application after remand, but during the pendency of the writ petition a counter affidavit was filed on behalf of the State bringing on record the order of the District Magistrate dated 06.11.2017 that came to be challenged by IA No. 503 of 2018 praying for quashing of the same.

7. This second rejection of the District Magistrate was on the basis of a police report and a report of the administrative authorities which in a cyclostyled manner have reiterated, the grounds stated in the police report, namely, that the applicant has attained the age of 55 years, that he does not appear to be physically fit to retain firearms, that he during the course of conversation appeared to be an ill-tempered person, that he appears to be of a litigative nature (मुकदमेबाज) and finally if such a person is granted a firearms licence then it would be detrimental to public peace and tranquility. The report of the police dated 22.10.2017 is extracted hereinunder:-

"ज्ञापंक 3562/17 पुलिस निरीक्षक सह थानाध्यक्ष का कार्यालय

कंकडबाग, पटना दिनांक 22/10/2017

सेवा में,

अनुमंडल पदाधिकारी महोदय,

सदर पटना।

प्रसंग:-भवदीय कार्यालय ज्ञापंक-1169/17, दिनांक-09.10.17।

विषय:-आवेदक महेश प्रसाद पिता स्व० रामरतन पता रतन कम्पलेक्स हाउस न०-276 अशोक नगर रोड न०-14 थाना-कंकडबाग जिला-पटना के सी०डब्लू०जे०सी०/एम०जे०सी० से संबंधित शस्त्र अनुज्ञप्ति हेतु आवेदन का जाँच/मंतव्य के साथ प्रतिवेदन।

महाशय,

उपरोक्त प्रसंग विषय के संदर्भ में सादर सूचित करना है कि आवेदक महेश प्रसाद पिता स्व० रामरतन पता रतन कम्पलेक्स हाउस न०-276 अशोक नगर रोड न०-14 थाना- कंकडबाग जिला-पटना का जाँच के क्रम में नाम पता सही पाया गया। इनके विरुद्ध कंकडबाग थाना अभिलेख में प्रतिकूल टिप्पणी अंकित नहीं है।

उल्लेखनीय है कि आवेदक का उम्र लगभग 55 वर्ष से अधिक हो गया है, एवं शारीरिक रूप से भी शस्त्र को सुरक्षित रख पाने में सक्षम प्रतीत नहीं लगते है। ये बातचीत के क्रम में मुकदमेबाज एवं गर्ममिजाजी प्रवृत्ति के व्यक्ति प्रतीत होते हैं। अतः श्रीमान् को सादर सूचनार्थ प्रेषित।

विश्वास भाजन

पुलिस अवर निरीक्षक

कंकडबाग थाना पटना।"

8. The District Magistrate relying on the provisions of the Arms Act, 1959 and the Rules framed thereunder has found these adverse remarks made against the petitioner sufficient to reject the grant of arms licence.

9. The first issue is with regard to the preliminary objection raised on behalf of the respondent-State supporting the impugned judgment that the appellant has an alternative remedy of filing an appeal against the order dated 6th of November, 2017. There is no doubt that the Act provides a complete machinery for the filing of an appeal but would that be justified on the facts of the present case to decline relief to the appellant? It is for this reason that we have indicated the peculiar facts of the case where the appellant had applied for an arms licence in the year 2009 and 10 years have passed in this litigative battle. His application had been earlier rejected and the appellate authority had remanded it to the District Magistrate to decide the matter in accordance with the amendments brought about in the Acts and Rules and for a police report in that regard. It is here that we may refer to the principle that the existence of power is one thing and its exercise another. We find that the District Magistrate has passed an order which in our opinion is a complete improper exercise of jurisdiction. This in turn virtually amounts to negating the entire process as warranted under the Act and Rules which would be evidently for the reasons that we are to record hereinafter in the given circumstances and that too after 10 years of unnecessary litigation and harassment to the appellant. We don't find it expedient or in the interest of justice to relegate the matter to the appellate authority and instead we propose to direct the District Magistrate once again to apply his mind in view of the observations made by us hereinunder. This also virtually amounts to sending back the appellant from where he started but which now needs to be done with a positive mandate. For this it is not necessary for us to again allow the remittance to the appellate authority as we find that the remittance to the original authority would be an appropriate solution in the peculiar background of this case. It is for this reason that we reject the contention that the appellant should be relegated to the alternative remedy of appeal.

10. The reasons for the above and for setting aside the order dated 06.11.2017 are that the police report which has found basis of the impugned order as quoted above categorically states that there are no criminal complaints and adverse reports against the appellant. His name and address was found to be correct.

11. The first reason adversely commented against the appellant is that he has attained the age of 55 years. We have not been able to find any Rule prohibiting a person to possess a firearm simply on account of his age. As to on what basis has the Police Officer found 55 years of age to be an age when a man cannot be

possessed of firearms is not understandable. It is not the report of the police that the appellant on some medical examination is declared physically disabled or is suffering from such a disease or any visual or hearing incapacity so as not to suit him for grant of licence. It is not the case of the Police Officer that he got the appellant physically examined in some hospital to test his strength, vitality and physical posture so as to gather any deficiency in health by virtue of age. Thus, neither the statute nor the existence of any valid material support this conclusion. We may however mention that the State Government itself and the Central Government while issuing instructions for transfer of an arms licence from a father to a son has made it permissible if the father has attained the age of 70 years. Reference be had to Rule 25 of the Arms Rules which is extracted hereunder:-

"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."

12. There is therefore an indication from where it can be gathered that a person who has attained the age of 70 years and above can transfer his licence to his heir but there is no age bar at all. We do not understand as to why the concerned police officer or the District Magistrate while passing order dated 06.11.2017 did not ponder over this or apply their mind before coming to the conclusion that the appellant having attained the age of 55 years is unfit to bear a firearm.

13. The second reason is a vague assertion that he does not appear to be physically fit. As noted above, we do not know how was this appearance assessed because it is well settled that appearances are deceptive. Nonetheless, this is a totally subjective and speculative assessment with no objectivity behind it. We have discussed the distinction in this regard in the judgment delivered today in LPA No. 1228 of 2018 where also the same situation had arisen. The District Magistrate has mechanically therefore relied on the said police report for which we do not find any adverse material except an assertion which may not even be based on a correct physical inspection. There is no basis or foundational fact available to declare the appellant to be physically unfit to bear a firearm. The reason appears to be perverse and quite possibly tainted with malice or motivated with a complete attitude of indifference. There may be several reasons to record such perceptions but it is sufficient to conclude that this assessment is based on no valid reason and suffers from the vice of unreasonableness as well. To say the least, it is almost obscure.

14. Added to this is the attainment of the age of 55 years mentioned in the police report. This is not the fault of the appellant. In 2017, the appellant was 55 years but when he applied in 2009 a period of 8 years is deductible on account of the litigative pursuit as the application had been filed wayback in 2009. We find no such reason either supportable under the Act and rules or otherwise on the basis of any reasonable assessment that an applicant for a firearms licence would lose his right to be considered for grant of licence if he has been compelled to fight a litigation for eight years. The attainment of age of 55 years therefore by no rational analysis can be a reason much less valid reason or cogent reason to reject a firearms licence by the authority. This attainment of age is attributable to the authorities that took so long to decide the matter.

15. The next reason given by the District Magistrate is again based on the same police report about the appellant being an ill-tempered person. There is no material to support this and we have given ample reasons after a full scale analysis in the judgment in LPA No. 1228 of 2018 to indicate such a report being based on mere surmises and conjectures. In the present case also, there are no facts to support this assessment except a bald format in the police report. We adopt the reasons given by us in LPA No. 1228 of 2018 to reject this speculative assessment by the police authorities unsupported by any material and since the same has been mechanically reproduced by the District Magistrate in the order dated 06.11.2017 we equally deprecate the same.

16. The third reason given is that the appellant appears to be of a litigative nature. There are no incidents of any litigation whatsoever indicated in the police report quoted above nor is there any mention about any case in any of the reports or the order of the District Magistrate. This impels us to believe that the only litigation which the police authority had in mind was the earlier round of litigation in the present matter itself. The authorities failed to understand that the right of a citizen to seek judicial review is part of the basic structure of the Constitution and his fundamental right to seek his remedy in accordance with law. This cannot be the basis to presume that a person is of a litigative nature. There is not even a single indication as to in how many cases the appellant is involved either civil or criminal. To the contrary, the police report contains a recital that there are no reports against him in the police station. This sort of conclusion is therefore a paramount, malicious and motivated conclusion. The irresponsible manner in which such reports are tendered without indicating any specifics and the acceptance thereof in a blind- folded manner by the licensing authority are a clear example of malice in law. We accordingly hold so.

17. It is on the basis of such a fallacious assessment which is unsupported by any material that an ultimate subjective conclusion has been drawn that grant of licence to such a person would disturb public peace and tranquility. The police report does not indicate any such incident of disturbance being caused by the appellant at least from the date he moved the application in 2009 and claimed to be dragged in litigation for 10 years. Had that been so, one could have understood the apprehension of the respondents, but unfortunately as indicated above a mere chanting repetition of the police report by all administrative authorities culminating into the passing of the impugned order dated 06.11.2017 reflects as if an assembly line of structured reasons have applied flatly without any individual assessment by the authorities to reject applications including the present case. We have expressed our concern and have also passed strictures in LPA No. 1228 of 2018. We adopt the same reasons to stricture the authorities for having carried out this entire exercise which can be termed to be an exercise carried out in a perfunctory manner.

18. These are the reasons that have impelled us not to relegate the appellant to the alternative remedy but rather to the District Magistrate to now at least apply his mind and haul up the police authorities for not having discharged their duties in accordance with the Acts and Rules in spite of the fact that the earlier appellate order whereby the matter had been remanded back clearly spelt out the duties and obligations to be discharged while assessing the request of the grant of licence.

19. We, therefore, allow the appeal and set aside the impugned judgment dated 29.08.2018 in CWJC No. 5579 of 2017 passed by the learned Single Judge and also quash the order dated 06.11.2017 passed by the District Magistrate, Patna with a further direction to him to pass an appropriate order within three weeks of the date of the presentation of the certified copy in accordance with the Arms Act

and Rules and in the light of the observations made hereinabove.