

(2019) 07 PAT CK 0310

In the Patna High Court

Case No : Letters Patent Appeal No. 1228 Of 2018 In Civil Writ Jurisdiction Case No. 4325 Of 2018

Mukesh Kumar Singh

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 17-07-2019

Acts Referred:

Arms Rules, 1962 — Rule 12, 25

Citation : (2019) 07 PAT CK 0310

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

Bench : Division Bench

Advocate : Deepak Kumar, Prabhat Kumar Verma

Final Decision : Allowed

Judgement

I.A. No. 6701 of 2018

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 within time.

L.P.A. No. 1228 of 2018

This appeal arises out of a refusal to grant an Arms licence to the appellant under the Heirloom Policy. The learned Single Judge has dismissed the writ petition filed by the appellant on the ground of availability of alternative remedy.

Even though, ordinarily, the alternative remedy has to be availed of, but in the exceptional circumstances of this case that we have noted, we were impelled to entertain this appeal and had passed the following order on 1st of July, 2019:-

"Learned counsel for the appellant is permitted to implead Dharmendra Kumar, the then Station House Officer of Police Station Phulwarisharif, District-Patna as respondent no.9 by name during the course of the day.

This appeal has been filed praying that the learned Single Judge even though has noted the fact that it was an application for grant of licence under the Heirloom Policy, yet has rejected the writ petition on the ground that the petitioner-appellant may file an appeal before the appellate authority.

From the facts on record and on a perusal of the order of the District Magistrate it is evident that the said rejection was on the basis of a psychological assessment of the Station House Officer Mr. Dharmendra Kumar that the appellant being a short tempered person cannot be granted licence. We do not find any discussion of the information and the source from where the said Station House Officer could come to such a psychological assessment about the nature of the appellant and as to what enquiry did he make and from whom about the nature of the appellant. To us, prima facie, this appears to be a mischievous sort of report having been made with a view to scuttle the grant of licence to the appellant.

We, therefore, call upon the said Mr. Dharmendra Kumar, respondent no.9, to file his personal affidavit before this Court as to on what basis did he arrive at the conclusion that the appellant was a short tempered person and in what meeting and in what manner did he come to such a conclusion. In the event, the affidavit is not filed, this Court will take a serious view of the matter against the said Station House Officer Mr. Dharmendra Kumar, respondent no.9.

A copy of this order be brought to the notice of the District Magistrate, Patna, as well who has based his order on this sort of opinion of the Police Officer.

Let learned counsel for the State to communicate this order to both the District Magistrate, Patna as well as to the newly added Station House Officer for filing a reply by Monday next.

Put on Monday next, i.e., 08.07.2019."

Today, the affidavit of S.H.O. Mr. Dharmendra Kumar as well as an affidavit of A.S.I. Mr. Deeplal Paswan have been filed that are taken on record.

We are not satisfied with the averments made in the affidavits, inasmuch as we find both the officers having not discharged their duties and responsibilities in good faith. This would be evident from the facts of the case narrated hereinafter.

The appellant applied for a DBBL gun licence for the safety of life and property on 2nd of August, 2013 before the District Magistrate, Patna. The father of the appellant was a valid licence holder. The petitioner's father died on 13th February, 2015 and the petitioner as per Rules deposited the arms with a gun house and then applied for grant of a licence. Since the same was not being considered, he was compelled to file C.W.J.C. No. 17044 of 2016 which was disposed of with a direction to the District Magistrate, Patna to pass an appropriate order within three months.

A contempt application was also filed being M.J.C. No. 3357 of 2017 and it is

during the pendency of the said contempt petition that the order of the District Magistrate was received which is dated 23rd October, 2017 whereby the appellant was informed that his application has been rejected relying upon the police report of the Station House Officer, Phulwari Sharif. Mr. Dharmendra Kumar was the then Station House Officer of the Police Station and Mr. Deeplal Paswan was the Assistant Sub-Inspector of Police who had been entrusted by him to submit the police report.

The contempt petition was consigned as the orders had been passed with liberty to the appellant to file a fresh petition.

It is to be noted that the Rules framed under the Arms Act came to be amended in the year 2016 and a new format was prescribed for making an application for grant of a licence. We may now proceed to put on record as to the reason recorded in terms of Rule 25 of the Arms Rules which has been taken to be an adverse remark against the appellant by the police. Rule 25 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 license."

It is this Rule which has been relied on by the District Magistrate to reject the request of the appellant on the ground that the police has reported that the appellant is possessed of a hot-headed mind and, therefore, on the basis of such an expression used by the police, the same was taken to be an adverse remark and, consequently, the application came to be rejected.

The counter affidavit which has been filed by Shri Dharmendra Kumar brings on record the report which had been submitted and has been made the basis of rejection. We extract the exact words from the report which narrates that an enquiry was made about the whereabouts of the appellant and also the records of the Police Station:-

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based even on an iota of evidence on the basis whereof it could have been gathered that the appellant was a hot-headed person. There is no indication in the report that the police officer himself interviewed the appellant in order to gather any such perception. It was, thus, a totally reckless performance of duty and, to our mind, the report appears to have been prepared while sitting at the police station, without making any tangible enquiry at all. We are thoroughly dissatisfied with the nature of such enquiries which are conducted and tendered on the basis of mere speculation and the whims and fancies of those who have been entrusted with this task.

The present case is a burning example of that nature and we further find that the District Magistrate also, instead of delving into this issue and trying to find out any possible material so as to refuse the grant of licence, mechanically passed the order on the basis of such an utterly subjective report which has no legs to stand. This clearly reflects malice in law.

The Arms Act and the Rules do not prohibit the grant of licence to a person having attained a particular age. Even assuming that the licensing authority has to take notice of all relevant material which would obviously include the physical and mental condition of a person based on some objective material, the same cannot travel into the realm of subjectivity to the extent as involved in the present case. We have not found the adverse remarks to be any where correlated to any of the ingredients under Rule 25 of the Arms Rules.

Even assuming for the sake of arguments that the subjective satisfaction of a person's mind may also be one of the requirements, "it is an unwritten rule of law, Constitutional and Administrative, that whenever a decision making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and the remote." The District Magistrate, while accepting or relying on a police report which is based on pure subjectivity, is obliged to apply his mind and find out the truthfulness or otherwise of the said report, as in the present case, as to the source and manner in which the concerned Assistant Sub-inspector of Police came to the conclusion that the appellant was a hot-headed person. No such exercise was undertaken even by the District Magistrate. It is well to remember what was stated by the Apex Court in the case of *Bharat Petroleum Corporation Ltd. Vs. Maddula Ratnavalli And Others*, reported in (2007) 6 SCC 81, paragraph 16 extracted hereinunder:

"16. An executive action must be informed by reason. An unfair executive action can only survive for a potent reason. An action which is simply unfair or unreasonable would not be sustained. Objective satisfaction must be the basis for an executive action. Even subjective satisfaction on the part of a State is liable to judicial review. The "State" acting whether as a "landlord" or a "tenant" is required to act bona fide and not arbitrarily, when the same is likely to affect prejudicially the right of others."

What we intend to convey is that the report of the police officer ought to have been based on certain existing state of affairs and not mere hearsay information. The report nowhere indicates as to who were the persons from whom the enquiry was made by the Assistant Sub-inspector of Police. There is no evidence of any incident that may have involved the appellant causing a law and order problem. It is not understood as to what form of calibration was applied for thermom-etering the assessment of hot-headedness and ill-temper.

There is one more dimension to the matter. There is nothing in the report which may indicate that even the father of the appellant had ever misused his arms or the appellant had ever misused the arms of his father. In the absence of any such material, we are amazed at the manner in which the entire matter has been disposed of by the District Magistrate. We are expressing our grave concern in order to inform the State Government and its officials that they should take ample care and place the responsibility on such officials if they lack in particulars giving rise to unnecessary litigation and harassment to a genuine applicant. We, therefore, record our dissatisfaction and a copy of this judgment shall be placed on the service record of both the police officials named alone to be taken care of in future while entrusting them with any such responsibility as we are of the view that the report tendered by the police officials was not an action taken in good faith. We had proposed the imposition of costs as well for being realized from their salary, but in view of the apologetic affidavit tendered today, we refrain from doing so.

Our order shall be brought to the notice of the District Magistrate, Patna as well as the Sr.S.P., Patna to take care in future and to inform all their subordinates to be careful in future while submitting reports which should be in conformity with law and should not be based on whims and fancies of the officials.

Apart from this, we would also direct that while granting licence the adherence to Rules should be made in conformity with rational principles and not based on whimsical subjective satisfaction as involved in the present case.

We, therefore, in the special circumstances of the case, allow this appeal, set aside the impugned judgment of the learned Single Judge dated 18th June, 2018 and quash the order of the District Magistrate, Patna, dated 23rd of October, 2017.

We further direct the District Magistrate, Patna to pass an order in the light of the observations made hereinabove, keeping in view the Heirloom Policy for the grant of licence to the appellant within a period of fifteen days from today. Any deviation shall be viewed seriously by this Court.