
(1990) 01 AHC CK 0015

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 1193 of 1989

P.N. Biswas and Co. and Another

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 08-01-1990

Acts Referred:

Arms Rules, 1962 — Rule 24

Citation : (1991) 1 AWC 222

Hon'ble Judges : R.A. Sharma, J

Bench : Single Bench

Advocate : Ashok Bhusan, for the Appellant;

Final Decision : Allowed

Judgement

R.A. Sharma, J.—Petitioners are holding licences in Form XII of Rules framed under the Arms Act, 1959 for sale and purchase of arms and ammunitions. Petitioner No. 1 was granted this licence in 1923 while Petitioner No. 2 is holding the licence from 1953. These licences of the Petitioners have been renewed from time to time. It appears that in 1986 Petitioners again applied for renewal of their licences through the District Magistrate, who sent the papers to the State Government. Government of U.P. While granting; renewal reduced the quota of arms and ammunitions for the purpose of sale and repairs by making necessary amendment in the licence. It is against these orders that the Petitioners have filed this Writ Petition.

2. At the admission stage the Government filed a counter affidavit and the learned Counsel for the Petitioners has stated that he does not propose to file any rejoinder affidavit in reply to the counter affidavit. I have heard learned Counsel for the Petitioners and learned Standing Counsel and the Writ petition in being disposed of in accordance with the Rules of the Court.

3. Grievance of the Petitioners is that the State Government does not have any power to reduce the quota and even if the Government has such a power, it has

acted mechanically on the basis of its policy decision contained in its order dated 8-5-1986 without giving any notice and reasonable opportunity of being heard to the Petitioners. Learned Standing counsel on the other hand has argued that the State Government, being licensing authority in respect of dealers licence in Form XII, has implied power to increase or reduce the quota of arms and ammunitions for sale and repairs and as the Government has already issued an order dated 8-5-1986, Government was fully justified to reduce the quota on the basis of the aforesaid order and it is not necessary to consider individual cases. It has further been argued that there is no provision in the Arms Act or Rules for giving any opportunity to the Petitioners before reducing the quota of arms and ammunitions. In this connection learned standing counsel has invited my attention to paragraphs 5, 7, 9 and 22 of the counter affidavit.

4. Learned Counsel for both the parties have agreed that there is no specific provision under the Arms Act and Rules except Rule 24 empowering the Government to fix the quota of arms and ammunitions for dealers licence in Form XII Rule 24 however, does not deal with fixation of quota as It merely enables the State Government to authorise licencees holding licence in Form XII to sell or keep for sale a specified amount of ammunitions of category I(b) and prohibits them from selling arms and ammunitions of category 1(b) or 1(c) to any person unless It is expressly permitted by the licence or certificate of exemption Rule 24 operates in different field and does not deal with fixation of quota of arms and ammunitions for purchase, sale or repairs However, State Government being the licensing authority, has the power to fix the quota as the power to fix the quota is incidental to its power of granting licence, whatever may reasonable be regarded as incidental to the power conferred by a law is to be treated within the jurisdiction of the authority on whom the power has been conferred by the law. Everything necessary to the exercise of a power is included in the grant of the power. In this connection it is appropriate to refer to the following passage from de Smith's Judicial Review of Administrative Action (Fourth Edition at page 95)

The House of Lords has laid down the principle that "whatever may fairly be regarded as incidental to, or consequent upon, those things which the Legislature has authorised ought not (unless expressly prohibited) to be held, by indical construction, to be ultra vires. This principle has been applicable to the statutory powers of all public bodies, and a high corporation of the reported cases involving the vires of administrative action have been concerned with the question whether a transaction is to be regarded as reasonably incidental to the exercise of statutory powers expressly conferred.

Power to grant licence without fixing a limit of arms and ammunitions may frustrate the very purpose for which the licences are granted and the Government as such, has implied power by virtue of being licensing authority to fix quota of the arms and ammunitions for the licenseees holding licences in Form XII. The contention of the learned Counsel for the Petitioners that the

Government has no power to fix such quota, cannot be accepted.

5. Licences in Form XU are granted to individuals and their quota of arms and ammunitions is liable to be fixed on the basis of various relevant considerations. What should be the quota depends on the demand which may differ from place to place. A locality where there are more persons holding arms licences may require more quota than a locality where the arms licences are issued to the limited persons. One and the same quota cannot be fixed for all dealers holding licence's in Form XII. Although, the G. O dated 8-5-1986 on the basis of which the quota of the Petitioners has been reduced has been claimed to be a secret document by the Government; but its copy has been filed by the Petitioners before this Court as Annexure VI to the writ petition and from its perusal it appears that the Government by its earlier order dated 25-1-1974 has fixed the quota for the dealers holding licences in Form XI and XII and has directed the District Magistrates to send to the Government the licences of those dealers, who are entitled to keep more quantity of arms and ammunitions than that fixed by the aforesaid Government order of 1974. It is thus, apparent that for the whole State of U.P. one uniform quota has been fixed for these dealers.

6. It is open to the Government to have general policy in regard to matters. Which are relevant to the exercise of its power, but it cannot impose fetters on its power or discretion by applying it rigidly to all cases coming before it. Even if the Government has laid down a general policy each case should be decided according to its own merit after considering as to whether general policy may or may not be applied to a particular case. In this collection reference may be made to the following passage from Halsbury Laws of England (Vol. I 4th Edn.) para 33 at page 35).

A public body endowed with a statutory discretion may legitimately adopt general rules or principles of policy, to guide itself as to the manner of exercising its own discretion in individual cases, provided that such rules or principles are legally relevant to the exercise of its powers, consistent with the purpose of the enabling legislation and not arbitrary or capricious. Nevertheless, it must not disable itself from exercising a genuine discretion in a particular case directly involving individual interests, hence it must be prepared to consider making an exception to the general rule if the circumstances of the case warrant special treatment.

To the same effect is the law laid down in the case of *British Oxygen Co. Ltd. v. Minister of Technology* (1970) 3 All Er 165 relevant extract of which is quoted below.

The general rule is that anyone who has to exercise a statutory discretion must not shut (his) ears to the application (to quota from Bankes, L.J.) I do not think that there is any great difference between a policy and a rule, there may be cases where an officer or authority ought to listen to a substantial argument reasonably presented urging a change of policy. What the authority must not do is to refuse to listen at all. But a Ministry or larger authority may have had to deal

already with a multitude of similar applications and then they will almost certainly have evolved a policy so precise that it could well be called a rule. There can be no objection to that provided the authority is always willing to listen to anyone with something new to say; of course I do not mean to say that there need be an oral hearing.

7. It is thus, clear that it is open to the Government to lay down the policy decision with regard to matters relating to the fixation of quota of arms and ammunitions; but it cannot refuse to consider a case on its own merit in order to find out as to whether the general policy should be applied to it or not, because quota may differ from place to place depending on various circumstances. Applying general policy rigidly may amount to imposing fetters on the exercise of its power, which is not permissible under law.

8. From the perusal of the counter affidavit; it is quite apparent that the Government has curtailed the quota of the Petitioners on the basis of the aforesaid Government Orders in a mechanical manner without considering the facts and circumstances of the cases of the Petitioners. It is also admitted in the counter affidavit that no opportunity of being heard was given to the Petitioners by the Government before amending their licences by reducing quota. It is true that there is no specific provision under the Arms Act and Rules framed thereunder to give an opportunity of being heard to a licensee before reducing his quota, but such a requirement is implicit in the exercise of such a power as it adversely affects the licensees/dealers. The Government was accordingly duty bound to give a reasonable opportunity of being heard to a dealer before curtailing his quota of arms and ammunitions.

9. The writ petition is accordingly allowed with costs and the orders of the Government reducing the quota of the Petitioners are quashed. Government is further directed to consider the whole question afresh after giving reasonable opportunity of being heard to the Petitioners in accordance with law.