

(2014) 06 MP CK 0041
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 580/2013

Principal Secretary State of M.P.

APPELLANT

Vs

Mohammed Riyazuddin

RESPONDENT

Date of Decision : 24-06-2014

Acts Referred:

Arms Act, 1959 — Section 15, 17

Citation : (2014) 06 MP CK 0041

Hon'ble Judges : A.M. Khanwilkar, C.J;Shantanu Kemkar, J

Bench : Division Bench

Advocate : Mini Ravindran, Deputy Government Advocate, Advocate for the Appellant; Piyush Mathur, Senior Advocate and Shri M.S. Dwivedi, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

1. Heard counsel for the parties for final hearing, by consent.
2. This appeal takes exception to the judgment of the learned Single Judge dated 5.10.2012 in Writ Petition No. 1608/2011. The learned Single Judge allowed the writ petition filed by the respondent following the reasons recorded in W.P. No. 2297/2011.
3. The writ petition filed by the respondent, in substance, was to challenge the rejection of application for renewal of arms dealer's licence filed by the respondent. In the stated writ petition reasons recorded by the learned Single Judge in the order dated 5.10.2012 can be discerned from paragraphs 9 to 11. The same reads thus:-
9. In the present case, the petitioner's license was valid upto 31.12.2009 and by no stretch of imagination the policy circular issued by the State Government dt. 16.7.2010, which is prospective in nature as stated in the policy itself, in clause 2.6 w.e.f. 12.3.2010 can be made applicable in case of the petitioner, as has been done by the respondents.

10. Not only this, this Court in the case of Smt. Sakina Bandoowala WP No. 11058/2010 decided on 17.3.2011 has taken a view that the provisions of the policy dt. 16.7.2010 will not certainly supersede the statutory provisions as contained under the Arms Act, 1959 read with Arms Rules, 1962.

11. Resultantly, as the policy dt. 16.7.2010 was made applicable in case of the petitioner, the impugned order passed by respondents dt. 26.11.2010 is, hereby, quashed. The respondents are directed to pass a fresh order keeping in view the statutory provisions under the Arms Act, 1959 and Arms Rules, 1962 and other notifications which were applicable on 31.12.2009 within a period of 45 days. The aforesaid exercise of passing a fresh order be concluded within a period of 45 days from the date of certified copy of this order.

12. It is needless to mention that the case of the petitioner will not be rejected by taking shelter of any clause under the policy dt. 16.7.2010.

(emphasis supplied).

4. On plain reading of these reasons we find force in the grievance of the appellant that the sole basis on which the writ petition has been allowed is that the Authority had committed error in applying the policy prevailing on the date of consideration of the renewal of licence application. The legal position in this regard has been expounded by the three Judges bench of the Apex Court in the case of P.T.R. Exports (Madras) Pvt. Ltd. and others Vs. Union of India and others, . In paragraph 5 of this decision, the court has observed that grant of licence depends upon the policy prevailing as on the date of grant of licence. That being the legal position expounded by the Apex Court and, therefore, binding on the High Court, the observations found in the impugned decision rendered by the learned Single Judge cannot be countenanced. As a result, we may agree with the appellant that the impugned decision be set aside.

5. Counsel for the respondent invited our attention to the fact that the decision of the learned Single Judge in Writ Petition No. 2297/2011, which has been followed in the present case for allowing the writ petition filed by the respondent, was subject matter of Writ Appeal No. 616/2013, which has been disposed of by the Division Bench vide order dated 13.12.2013.

6. On plain reading of the said decision, we, however, find that the Division Bench has not dealt with the legal position stated by the learned Single Judge that the Authority was in error in applying the policy which was prevailing on the date of consideration of the renewal application. As noticed earlier, that view is contrary to the legal position expounded by the three Judges Bench of the Apex Court.

7. Counsel for the respondent placed reliance on the observations found in paragraphs 68 and 70 to 74 of another decision of the Supreme Court of two Judges, in the case of Global Energy Ltd. and Another Vs. Central Electricity Regulatory Commission, . No doubt, in paragraph 68 of this decision, the Apex

Court has made reference to the judgment in P.T.R. Exports case, but, in our opinion, there is nothing in the said judgment which suggests that the legal position stated in the said case that grant of licence depends upon the policy prevailing as on the date of grant of licence is not correct. In any case, it is not open to the respondent to contend that the two Judges Bench of the Apex court can be understood to have overruled the decision of the three Judges Bench in P.T.R. Exports case.

8. The question is: after setting aside the judgment under appeal what further order should be passed? In our opinion, the appropriate order is to restore the writ petition to the file to its original number, to be considered by the learned Single Judge afresh on its own merits in accordance with law by leaving all questions open.

9. Counsel for the respondent/original writ petitioner, however, submits that this Court may examine the question as to whether the petitioner has already complied with the conditions contained in the policy dated 16.7.2010 and for that reason the order passed by the Authority, annexure P/12, in the writ petition deserves to be set aside and the appellant be directed to grant renewal licence in favour of the respondent. We are afraid, while exercising intra-court appeal jurisdiction we may not venture into other issues which have not been adjudicated by the learned Single Judge for the first time. However, we may agree to the submission made by the respondent that instead of placing the matter before the learned Single Judge, the appropriate Authority may be directed to reconsider the renewal application afresh in accordance with law keeping in mind the provisions of the Arms Act, 1959, the Arms Rules, 1962, framed thereunder, and the policy in vogue, and also the argument of the respondent about the effect of section 15 read with section 17 and rule 54 of the Rules.

10. Accordingly, we may dispose of this appeal by setting aside the order under appeal dated 5.10.2012 and, instead, allow the writ petition by setting aside annexure P/12 and directing the appellants to re-examine the claim of the respondent in licence renewal application, annexure P/5 and also annexure P/11, on its own merits in accordance with law and uninfluenced by its earlier decision dated 26.11.2010.