
(2001) 09 SHI CK 0009
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 510 of 2001

Pushpinder Jain

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 25-09-2001

Acts Referred:

Arms Act, 1959 — Section 13, 14(3)
Constitution of India, 1950 — Article 226

Citation : (2001) 3 ShimLC 403

Hon'ble Judges : C.K. Thakker, C.J.; R.L. Khurana, J

Bench : Division Bench

Advocate : S.V. Sharma, for the Appellant; M.L. Chauhan, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

C.K. Thakker, C.J.—This petition is filed by the Petitioner for appropriate directions to the Respondent authorities to grant Arms Dealer's Licence to the Petitioner u/s 13 of the Arms Act, 1959 (hereinafter referred to as "the Act").

2. The case of the Petitioner is that he applied for Arms Dealer's Licence by an application dated December 29, 1999. Since he was required to take a shop on rent, he undertook the said exercise and on January 15, 2000, he took a shop on rent. On April 25, 2000, Sub Divisional Magistrate, Una forwarded his report and recommendation was made for grant of licence in favour of the Petitioner. In spite of reminders by the Petitioner, nothing was done by the authorities. Being aggrieved by that action, the Petitioner was constrained to approach this Court by filing Civil Writ Petition No. 958 of 2000. The said petition was allowed by the Division Bench on December 18, 2000. In the operative part, the Division Bench observed thus:

In the facts and circumstances of the case, in our opinion, an appropriate direction at this stage which can be issued is to direct the Respondents-authorities to decide the application of the Petitioner on merits in accordance

with law. "Since the application was made by the Petitioner in December, 1999 and about one Arms year has passed, it will be in the interest of justice if the Respondents authorities are directed to dispose of the application of the Petitioner as expeditiously as possible preferably within one month from today. We may, however, state that we are not expressing any opinion on merits of the matter and the decision will be taken by the authorities strictly in accordance with law on its own merits. The writ petition stands disposed of in the terms indicated above. No costs.

3. The case of the Petitioner is that the Respondents neither granted the licence nor even complied with and implemented the order within the stipulated period and finally by a communication dated April 11, 2001, by the District Magistrate, Una, the Petitioner was informed that the Government is not in a position to issue arms dealership licence to the Petitioner as "there are already two Arms dealership licence in function, who are meeting the demand of the Arms and ammunition of the people of this area". The said order is challenged by the Petitioner in the present proceedings.

4. Notice was issued as to admission as well as final hearing, pursuant to which the Respondents appeared. Reply affidavit is also filed. The petition is admitted. Mr. M.L. Chauhan, learned Deputy Advocate General appears and waives service of notice of admission on behalf of the Respondents. In the facts and circumstances, the matter is taken up for final hearing today.

5. The learned Counsel for the Petitioner contended that the action taken by the Respondents is clearly illegal and contrary to law. It was submitted that it is the right of the Petitioner to get the licence and since the same has been refused, the action is not only violative of the statutory rights of the Petitioner but also of fundamental right to carry on business. It was also submitted that on December 18, 2000, a direction was issued by this Court to decide the matter on merits within a period of one month, but it was not done. No application for extension was moved by the Respondents and an order was passed as late as in April, 2001. It was also stated that though the order was to be passed by the Government, it was not done. A copy of the order was also not supplied to the Petitioner and a communication was sent by the District Magistrate, Una stating therein that the Government had taken the action. Moreover, the reasons and grounds weighed with the Government that there are two other shops also cannot be said to be legal and well founded as no licence can be refused on that ground under the provisions of the Act. It was, therefore, prayed that the petition deserves to be allowed by issuing a writ of mandamus directing the Respondent authorities to grant licence licence to the Petitioner. It was further stated that in view of the fact that the Petitioner before making any application had to take shop on rent, he had incurred substantial expenses and hence, compensation may be awarded to him.

6. In the counter affidavit, the Respondents have stated that an application was ordered to be considered by this Court in accordance with law. The application

was considered and it was rejected. According to the learned Deputy Advocate General, taking into account the fact that there are two persons having "Arms Dealership Licence", it was thought fit by the Respondent authorities not to grant licence to the Petitioner and such an action cannot be said to be unreasonable or arbitrary. It was also stated in the counter affidavit that a third person was also having licence. His licence was not renewed and he has taken appropriate proceedings and even that matter is pending. In the circumstances, it was submitted that it cannot be said that the action of Respondent authorities deserves interference.

7. Having heard the learned Counsel for the parties, in our opinion, the petition deserves to be partly allowed. So far as the petition is concerned, it is not specifically stated in the petition that the decision has been taken without affording opportunity of hearing to the Petitioner, but it is equally true that what has been sent to the Petitioner which is impugned in the present petition is a communication addressed by the District Magistrate, Una (Annexure P-6) dated April 11, 2001. The said communication states that the Government has shown its inability to issue arms dealership licence to the Petitioner. Though an affidavit-in-reply is filed by the Respondents, even in that reply, the order passed by the Government has not been brought on record. In these circumstances, in our opinion, the limited grievance made by the Petitioner that the order is not in consonance with the principles of natural justice and fair play and has not been supplied to him appears to be well founded.

8. In this connection, it may be profitable to refer to a decision of the Division Bench of this Court in *Solan Arms and Ammunition Dealers and Anr. v. State of Himachal Pradesh and Anr.* 1997 (2) Sim. L.C. 136, wherein, a similar question arose before this Court. The petition was allowed by holding that the principles of natural justice would be applicable in such matters. Since there is no order passed by the State Government which is on record and the communication which has been sent by the District Magistrate, Una also does not state anything with regard to affording of opportunity to the Petitioner, the order is vulnerable.

9. Moreover, Sub-section (3) of Section 14 of the Act also states that where the Licensing Authority refuses to grant licence to any person, it shall record reasons in writing for such refusal. Again, such authority will furnish to the person concerned on demand a brief statement of the same unless in any case the licensing authority is of the opinion that it will not be in the public interest to furnish such statement.

10. Apart from the fact that there is no order in which the reasons which were required to be recorded are reflected, the copy of the order is also not furnished. The grievance of the Petitioner is that there is no legitimate reason to reject the application. The copy of the order was never supplied to the Petitioner. Hence, the order deserves to be quashed and set aside.

11. It was then contended that the Court may direct the Respondents authorities

by issuing a writ of mandamus to grant licence in favour of the Petitioner. In this connection our attention was invited to a decision of a Single Judge of the High Court of Allahabad in Ganesh Chandra Bhatt Vs. District Magistrate, Almora and others, It is no doubt true that in that case a writ was issued by a learned Single Judge of the High Court of Allahabad directing the State Government to grant licence in favour of the Petitioner. In our opinion, however, no such direction can be issued. The only direction which can be issued to the authorities is to consider and decide the matter in accordance with law.

12. In State of Mysore and Another Vs. Syed Mahmood and Others, the Petitioner claimed promotion which was to be given on the basis of "seniority-cum-fitness". According to him though he was eligible and hence, ought to have been promoted, he was not promoted and persons junior to him came to be promoted. He, therefore, approached the High Court of Mysore by filing a petition under Article 226 of the Constitution of India. The High Court allowed the petition and directed the Government to give promotion to him from the date on which junior to the Petitioner was promoted. Being aggrieved by the final directions, the State of Mysore approached the Supreme Court.

13. Allowing the appeal and setting aside the order passed by the High Court to the extent by which the High Court directed promotion to be given to the Petitioner, the Supreme Court observed that the only direction which could have been issued by the High Court to the State Government was to consider the case of the Petitioner alongwith other persons whose cases were considered. The Supreme Court, therefore, partly allowed the appeal, directed the State to consider the case of the Petitioner alongwith other persons as on that day, to take appropriate decision and if he was found fit to grant consequential benefits on the basis of such consideration.

14. In our opinion, the ratio laid down in Syed Mahmood would apply to the facts of the present case also. In fact, in Solan Arms and Ammunition Dealers and Anr. this Court also did not think it fit to issue mandamus directing the Respondents to grant licence. Hence, so far as the said prayer is concerned, in our opinion, it cannot be said to be well founded and cannot be accepted.

15. The question then is regarding compensation/damages. It was submitted that the Petitioner had to take a shop on rent as he had to incur expenses. Since there was default on the part of the Respondents authorities in not granting licence, the Respondents authorities must pay damages/compensation to the Petitioner. In our opinion, ordinarily, in exercise of extra-ordinary jurisdiction under Article 226 of the Constitution of India, this Court will not pass such orders. It depends upon the facts and circumstances of the case which require evidence to be led and findings to be arrived at. We, therefore, reject the prayer by observing that it is open to the Petitioner, if so advised, to take appropriate proceedings in accordance with law.

16. Lastly, it was submitted that though the order was passed by this Court in

December, 2000 and a direction was issued to dispose of the application within a period of one month, it was not done. That grievance of the Petitioner is also well founded. The direction has not been complied with nor extension was sought. For the first time, the Petitioner was informed through the District Magistrate, Una in April, 2001 that the Government has rejected the application filed by the Petitioner. In the facts and circumstances of the case, therefore, in our opinion, ends of justice would be met if we allow the petition by awarding costs to him. The Respondents authorities will pay cost to the Petitioner of this petition which is quantified at Rs. 5,000.

17. For the foregoing reasons, the petition deserves to be partly allowed and it is directed that the Respondent authorities will consider the application of the Petitioner and take appropriate decision afresh in accordance with law after affording opportunity of hearing within a period of six weeks from today. The petition is accordingly allowed to the above extent.

We may clarify that we may not be understood to have expressed any opinion on the merits of the case.