
(1996) 07 AHC CK 0085

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 14525 of 1982

Ram Pratap Mgarwal

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 10-07-1996

Acts Referred:

Citation : (1996) 07 AHC CK 0085

Hon'ble Judges : Binod Kumar Roy, J

Final Decision : Allowed

Judgement

Binod Kumar Roy, J.—The petitioner assails validity of the order dated 2991981 passed by Pargana Magistrate, Shahjahanpur rejecting his prayer to grant licence for a D. B. B L. Gun under the provisions of the Arms Act, as contained in Annexure4 as well as the appellate order dated 1861982 passed by the Additional District Magistrate, Shahjahanpur in appeal No. 26 of 1981 preferred against the aforementioned order.

2. The petitioner asserts, inter alia, that his father Shyam Lal Agrawal was a licensee under the Arms Act and was holder of a O. B. B. L. gun, who however, died in 1981 and thereafter his gun was deposited with the police which is still lying deposit at Sadar Malkhana, Pilibhit; that the petitioner applied for grant of a licence in his name and for transfer of the gun to him on the ground that he happens to be the heir, that comments were called for from the police; that S. O. Pawai, C. O. Pawai and Superintendent of Police, Shahjahanpur all submitted their reports recommending grant of licence, yet by the impugned order the Pargana Magistrate proceeded to reject his prayer on the ground that in the village 23 persons have already been granted licence besides there is partybandi in the village and hence it will not be in public interest to grant the licence. The appellate authority held that the aforementioned reasons are sufficient besides the appellant has not furnished any proof to support his heirship.

3. Sri Ramendra Asthana, learned counsel appearing in support of the petition, contended as follows: (i) The reasons assigned are incorrect. It was not the case

of the State of U.P. before the appellate authority that the petitioner is not the heir of Shyam Lal Agrawal. In fact in the counteraffidavit, which has been filed in regard to the statement made in paragraph 1 of the writ petition that the petitioner's father late Shyam Lal Agrawal was a licence holder and possessed licence for a D. B. B. L. gun and that the further statement in paragraph 3 of the writ petition that his father died sometimes in 1981 and on his death the licence ceased to exist and the statement made in paragraph 4 of the writ petition that the petitioner immediately deposited the gun with the police etc. It has been stated that these averments relate to the District of Pilibhit and as such the deponent is not in a position to offer any comments. The learned counsel contended that it is a fit case in which this Court should take recourse to the doctrine of nontraverse in view of the nondenial of the facts stated by the petitioner and accordingly the second reason given by the appellate authority that no proof was furnished by the appellant before him showing his heir ship was completely misconceived besides that question was not raised even by anyone, (ii) There was nothing on the record to show that in the village there was parti bandi and that the petitioner was interested in one or the other party.

4. Sri J. N. Verma, learned standing counsel, could not show me the record to justify that in the village there are parties and that the petitioner has been taking side of one or the other party and accordingly it would be conducive in the public interest to grant licence to him.

5. It has already been held by this Court time without numbers that existence of licence in the village is not a relevant ground to reject the prayer for grant of licence under the Arms Act. In the aforementioned view of the matter it is difficult for me to uphold the impugned order.

6. This writ petition, is accordingly, allowed and Appeal No. 26 of 1981 is remitted back for its expeditious consideration by the appellate authority. The District Magistrate, Shahjahanpur will consider the desirability of disposing of the appeal himself in accordance with law and in the light of the observations made as above.

7. In the peculiar facts and circumstances I make no order as to cost.

8 Let a writ of certiorari quashing the impugned appellate order issued and consequent mandamus commanding the District Magistrate Shahjahanpur to take steps for expeditious disposal of appeal No. 26 of 1981.

Writ petition allowed.