
(2008) 02 PAT CK 0009
In the Patna High Court
Case No : CWJC No. 10070 of 2004

Ratan Lal Kedia

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 25-02-2008

Acts Referred:

Citation : (2009) 1 PLJR 590

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : Alok Kumar Sinha and Raj Rashmi Sinha, for the Appellant;

Final Decision : Allowed

Judgement

Ajay Kr. Tripathi, J.—An application made by the petitioner in the year, 1983 for grant of licence under Form No. XII for storage and sale of certain arms and ammunitions under Rule 24(1) of the Arms Rules not attending finality despite passage of two decades is the background under which the present writ application came to be filed. Even after filing of the writ application in the year, 2004 it has taken four years for the respondent-State authority to file counter affidavit and state their position. The some outcome of the various affidavits filed by the respondents is that the State has decided to reject the application of the petitioner without any cogent reason or basis. Petitioner is an Arms Dealer and holds different licence required under the Arms Act and Rules. As part and parcel of his desire to diverse if not expand his business, he applied for grant of licence under Form XII of Rule 24(1) of the Arms Rules. This was in the year, 1983. There was recommendation in favour of the petitioner by the local District Magistrate and the Superintendent of Police which was duly forwarded to the Joint Secretary, Home, Government of Bihar in the year 1983-84 itself. There was another bout of enquiry in the year, 1987 but nothing emerged from the same. On 24.1.1992 the District Magistrate, Gopalganj sent his recommendation, after due verification, for issuance of a licence to petitioner to the respondent-Home Department, Government of Bihar. It took ten years for Under Secretary to

respond. On 15th June, 2002 the Under Secretary, Home (Police) opined that the matter had become too old therefore a fresh recommendation was required. It is an another issue that the matter was made old if not stale because of sheer inactivity on the part of the Department of Home, (Police). The District Magistrate, Gopalganj vide letter dated 23.7.2002 asked the Superintendent of Police to give his opinion and recommendation. The Superintendent of Police opined in favour of the petitioner for grant of licence under Form XII. The recommendation was forwarded by the District Magistrate to the Home (Police) Department. When nothing came out of the same the petitioner moved this High Court.

2. Counter affidavit on behalf of the Deputy Secretary, Home (Police), Government of Bihar came to be filed. This Court regrettably records that not only the counter affidavit was evasive but also sketchy. On 25.1.2008 the Court had to reject the counter affidavit filed on behalf of the Deputy Secretary and a cost of Rs. 1,000/-had been imposed. Liberty was granted to file another affidavit on the issue explaining the reasons as to why the authorities in their wisdom had decided to finally reject the application of petitioner for grant of licence which was indicated in the earlier counter affidavit.

3. A fresh counter affidavit came to be filed on 30th January, 2008. This affidavit was sworn by the Joint Secretary Home (Police), Government of Bihar. In the new counter affidavit it was stated that a report was called for from the Superintendent of Police (C) CID, Patna and Superintendent of Police (Security) Special Branch on the issue for grant of licence to the petitioner. A detailed enquiry was carried out on sixteen parameters which is evident from the report dated 24.5.2007 annexed with Annexure-A. There is yet another report on the same date where a response with regard to four other parameters have been given. An order dated 16th October, 2007 contained in Annexure-B has been brought on record where a communication was issued to the District Magistrate, Gopalganj that the State Government has refused to sanction, licence under Form XII made by the petitioner.

4. A perusal of the two Annexures-A and B would show that there seems to be a complete lack of application of mind by the respondents on the issue because reading of the report submitted by the Superintendent of Police (C) would show that none of the parameters on which the response was sought for by the Home (Police) Department anything negative was found against the petitioner which could be the cause of denial of licence to him. There is absolutely no negative endorsement on any of the parameters against the petitioner except one sentence in the report which has taken away the benefit of the licence to the petitioner. The leading question is question No. 4 contained on page 8 of the counter affidavit which says whether there is requirement of grant of yet another licence in the small district? The answer is "NO". This has been made a basis for rejection of the arms licence.

5. The Court directed the Deputy Secretary (Home) to be present to explain to

the Court as to the rational behind the rejection of the claim of petitioner and whether there are any such guidelines, rules or direction which could be guiding principle in such decision making process. The original file relating to the decision making was also produced in Court. The Deputy Secretary did not produce any such guidelines and went to the extent by stating that there are no guidelines as such. On a perusal of noting in the file one opinion of the Superintendent of Police (C) whether the licence under Forms XI and XII was required in small district proved to be turning point so far as the claim of petitioner is concerned. This Court is constrained to record that a subjective personal opinion of any functionary of the State cannot decide the fate of any citizen even if it means a grant of arm licence under the statute.

6. There is absolutely nothing in the counter affidavit to demonstrate as to on what basis the need for a licence in a district is decided. What is the material on which a district can be declared big or small. What is the rational in deciding as to how many licence can be issued in the district whether it is population? the crime rate? the number of persons holding licenses in the district? or otherwise eligible to possess arms or many such circumstances which would give or assist in a decision making process for issuing of an arms licence to a dealer in a district. Unfortunately despite many counter affidavits filed on behalf of the State no light was shed on the matter. The Court is constrained to record that the sum essence of the proceedings are that a decision of this kind is made by subjective whims and caprice of a set of State functionary who are not even in a position to justify or explain the decision taken. What has been recorded above by this Court does not give happy feeling because decision making by any authority, be it statutory, be it administrative cannot be allowed to have such discretionary powers based on subjectivity. This Court is constrained to record the opinion of the Hon"ble Supreme Court rendered in the case of Smt. Shalini Soni and Others Vs. Union of India (UOI) and Others, .

"It is unwritten rule of the 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."

7. It is also settled principle that where an authority exercises its discretion mechanically without weighing the relevant circumstances it will amount no exercise of discretion and such orders are fit to be quashed (Hindustan Steels Ltd., Rourkela Vs. A.K. Roy and Others,).

8. In the given facts as well as judicial pronouncements, this Court comes to a conclusion that the order dated 16th October, 2007 contained in Memo No. 9897 passed by the Deputy Secretary, Home (Police), Government of Bihar is totally arbitrary decision and the same cannot be sustained. The order stands quashed and direction is hereby issued to the respondents to reconsider the matter afresh keeping the irrelevant considerations out of such decision making process and take a final decision with regard to the grant of arms licence under Form No. XII

to the petitioner within a period of three months from the date of communication or production of a copy of this order. This writ application is allowed.