

(2019) 02 PAT CK 0025

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 19536 Of 2016

Rohan Kunal

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 19-02-2019

Acts Referred:

Arms Rules, 2016 — Rule 13, 12(3), 14, 16(2), 25
Constitution Of India, 1950 — Article 226

Citation : (2019) 02 PAT CK 0025

Hon'ble Judges : Dinesh Kumar Singh, J

Bench : Single Bench

Advocate : B.N. Pandey, Deepak Kumar, Saroj Kumar Sharma

Final Decision : Allowed

Judgement

Heard learned counsels for the parties.

The present writ application has been filed for quashing the order dated 18.11.2016 under Memo No. 3456/Arms, passed by the Respondent No.2, District Magistrate, Patna, as contained in Annexure 5, whereby the application of the petitioner filed for grant of licence for SBBL/DBBL gun has been rejected on the ground that the petitioner being the grand son of the licensee, does not come within the ambit of heirs of the licensee under the family heirloom policy.

The factual matrix of the case is that the grandfather of the petitioner, namely, Dr. Ramashray Prasad Yadav was a licensee, having licence no. 235/57 for SBBL/DBBL gun. Subsequent to the death of his grand father, the gun was deposited with the arms dealer M/s Baidyanath Prasad & Sons, Patna on 18.9.2010, deposit receipt whereof is contained in Annexure 1. Thereafter, the petitioner submitted an application for grant of licence for SBBL/DBBL gun on 18.12.2014 before the Respondent No. 2, District Magistrate, Patna. Subsequently, the police report was submitted recommending in favour of the petitioner, but in spite of that, no decision was taken on the application of the petitioner, which necessitated the

petitioner to file writ application being CWJC No. 7378 of 2015 before this Court for a direction to the licensing authority to take a decision on the application of the petitioner under Family Heirloom Policy. During the pendency of the said writ application, the application of the petitioner was rejected vide Memo No. 1932 dated 14.7.2015 by the Respondent No. 2, District Magistrate, Patna. The said rejection order was challenged through I.A. No. 6941 of 2015 in the said writ application and a Bench of this Court vide order dated 28.9.2015, as contained in Annexure 4/B, quashed the order of Respondent No. 2, District Magistrate, Patna and directed the licensing authority to consider the application of the petitioner under Family Heirloom Policy. However, by inadvertence, in the writ order in place of grand father, father was recorded. Subsequently, the petitioner submitted a representation along with the said order of the writ court before the licensing authority Respondent No. 2, District Magistrate, Patna but the prayer of the petitioner for grant of licence for SBBL/DBBL gun was rejected on the ground that the grand son does not come within the category of heirs of the deceased licensee. Hence, the present writ application.

It is submitted by learned counsel for the petitioner that the Arms Rules, 2016 (hereinafter referred to as Rules, 2016) came into force with effect from 15.7.2016 whereas the impugned order was passed on 18.11.2016. Rule 25 of Rules, 2016 prescribes the procedure for grant of arms licence to the legal heirs of the licensee. The Explanation of the said Rule 25 of Rules, 2016 suggests that for the purposes of Rules, 2016 legal heir includes husband, wife, son, daughter, son-in-law, daughter-in-law, brother, sister and grandchildren of the licensee or the deceased licensee, whereas the petitioner's claim has been rejected on the ground that the family heirloom policy does not include the grand child of the licensee or the deceased licensee in the category of legal heirs.

However, the Ministry of Home Affairs, Government of India vide letter no. V-11016/16/2009-Arms dated 31.3.2010, directed the Secretary (Home Department), All States/Uts to follow the parameters for grant of various categories of licence. Clause (iii) of the said letter stipulates the grant of licence under the heirloom policy. Initially, under the heirloom policy, the heirs of the licensee or the deceased licensee were the husband, wife, son and daughter but the ambit of the same was extended by the said executive instruction to son-in-law, daughter-in-law, brother and sister of the existing licensee, hence the grand children were not included as heir under the Heirloom Policy but relying on the same circular the Respondent No. 2, District Magistrate, Patna vide order dated 27.12.2014 as contained in Annexure 6, in the case of Vivek Kumar Sharma, granted licence who was a grand-son of the deceased licensee.

Learned counsel for the Respondent-State, however, submits that at present he is not having any instruction with regard to the exact parameters adopted by the licensing authority with regard to the petitioner and said Vivek Kumar Sharma.

Since the present writ application was registered on 6.12.2016 and no counter affidavit has been filed so far, this Court is not inclined to adjourn the matter any

further. This Court is of the view that the discretionary jurisdiction under Article 226 of the Constitution of India is usually exercised when there is no efficacious alternative remedy. However there are certain exceptions, as has been enumerated by the Apex Court in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors., reported in (1998) 8 Supreme Court Cases 1. Paragraph 15 of the judgment reads as follows:

"15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bare in at least three contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."

In the present case, it appears that the said executive instruction with regard to taking decision on the application for grant of arms licence under heirloom policy has been applied in two different ways in context of two similar applicants. Apart from that, the impugned order was passed subsequent to coming into force of Rules, 2016 which stipulates that the grand children are also treated as one of the legal heirs of the licensee or deceased licensee for the purpose of implementing the heirloom policy.

Rules, 2016 came into force with effect from 15.7.2016 after its publication in the Gazette of India whereby Arms Rules, 1962 was superseded and what was saved is the things which has been done or omitted to have been done before such supersession.

In the present case, initial application for grant of licence was submitted on 18.12.2014, but since decision was not taken on such application, hence the petitioner filed CWJC No. 7378 of 2015 but during the pendency of the said writ application, the respondent no. 2 the District Magistrate, Patna rejected the application of the petitioner vide order dated 14.7.2015. Thereafter, a Bench of this Court vide order dated 28.9.2015 passed in CWJC No. 7378 of 2015, quashed the order and directed the respondent no. 2 the District Magistrate, Patna to consider the application of the petitioner under Family Heirloom Policy but the same was kept pending and ultimately the order was passed on 18.11.2016 rejecting the claim of the petitioner much after coming into force of Rules, 2016. Hence, respondent no. 2 the District Magistrate, Patna ought to have considered the application within the parameters stipulated in Rules, 2016.

Learned counsel for the petitioner also submits that his application should be considered within the parameters of Rules, 2016. It is relevant to explain that in Arms Rules, 1962 (hereinafter referred to as Rules, 1962), there was no provision for giving preference to the legal heirs of the licensee and the same was considered, but the preference to be given to the legal heirs of the licensee used to be governed by the executive instructions dated 31.3.2010 issued by the Ministry of Home Affairs, Government of India and its consequential instructions issued by the Principal Secretary, Home, Government of Bihar. By coming into force of Rules, 2016, Rules, 1962 was superseded and what was saved is the things which has been done or omitted to have been done under the Rules, 1962 but the executive instruction was not saved under the saving clause. Hence, after coming into force of Rules, 2016, any consideration on the basis of the executive instruction of 2010 is beyond the scope of the provisions of Rules, 2016.

Rule 25 of Rules, 2016 provides procedure for grant of arms licence to the legal heirs of the licensee which reads as follows:

"25. Grant of licences to legal heirs.? (1) The licensing authority may grant a licence ?

(a) after the death of the licensee, to his legal heir;

or

(b) in any other case, on the licensee attaining the age of seventy years or on holding the firearm for twentyfive years, whichever is earlier, to any legal heir nominated by him:

Provided that notwithstanding the provisions contained in rule 12 of these rules, the licensing authority may grant a licence to such legal heir if the eligibility conditions under the Act and these rules are fulfilled by the said legal heir and there are no adverse remarks in the police report.

(2) Where a licensee leaves behind more than one legal heir and the legal heirs decide amongst themselves to retain the arm or arms of the deceased, one of the legal heirs nominated by all other legal heirs may apply for a licence under sub-rule (1) along with the following documents, namely:-

(i) a declaration of no-objection from the remaining legal heirs;

(ii) an indemnity bond executed by the applicant giving full details of the licence and the arm or arms endorsed thereupon; and

(iii) a copy of the death certificate of the deceased licensee.

(3) Where the legal heirs decide to dispose of the arm or arms endorsed on the licence of the deceased licensee, they may apply to the licensing authority for grant of a limited period permission to sell the arm or arms, within the time allowed by such authority, to any licensed dealer or to any other person entitled to possess an arm under these rules.

Explanation. ? For the purposes of this rule, 'legal heir' includes husband, wife, son, daughter, son-in-law, daughter-in-law, brother, sister and grandchildren of the licensee or the deceased licensee."

The Explanation of Rule 25 of Rules, 2016 stipulates for grant of licence to the heirs wherein grant children are treated to be legal heirs of the existing licensee or deceased licensee. Hence, the impugned order has been passed in absolute violation of the provisions of Rules, 2016. Moreover, the Respondent No. 2, District Magistrate, Patna has failed to even consider the provision under Rule 25 of Rules, 2016. This Court is tempted to highlight the double standard adopted by the licensing authority while passing the impugned order in the present case which reads as follows:

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1959 ?? ???? 13;3 ???;? ??? ??? 14; 1???; ???;???? ???? ????? ????????? ????
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0?0?0?0 ???? ???? ???? ???? ????-???? ???? ???? ???? ???? ???? ?
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Further, concluding paragraph of order passed in the case of Vivek Kumar Sharma reads as follows:

"?????? ??????? 1959 ?? ???? 13, ????? ???? 1962 ??? ????? ?????????, ??? ????
?-??????, ??? ???? ???? ???? ???? ???? ???? ???? ???? ???? ????
?? ???? ????-?.11016 ??16??20019? ????? ????-31.03.2010 ??? ????????? ?
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The above two orders as contained in Annexures 5 and 6 clearly suggest the arbitrary manner in which the licensing authority has exercised the discretionary jurisdiction vested in his office.

There was no time frame fixed for deciding the application for grant of licence under Rules, 1962, however, under Rules, 2016 the time limit for grant of licence has been fixed which stipulates that the licensing authority after considering the application or on being satisfied that the applicant has fulfilled the conditions, shall grant or refuse to grant licence for personal category of arms and ammunition in Category 3 of Schedule I by passing speaking reasoned order, in writing, within a period of sixty days of receipt of the police report. Rule 14 of

Rules, 2016 stipulates that on receipt of an application for grant of licence under Sub-Section (1) of Section 13 or every subsequent renewal thereof under Section 15, the licensing authority shall call for a report from the Officer-in-charge of the nearest police station and such report has to be transmitted within thirty days of the date of receipt of the application by the Officer-in-charge.

Under Rule 16(2) of Rules, 2016, in order to ensure rendering of different services by the licensing authority in a fixed time frame, Schedule V has been made. Column (2) of Schedule V specifies different nature of services whereas Column (4) of the said Schedule specifies the time frame in which such service has to be rendered by the licensing authority.

Sl. No. 1 of Schedule V stipulates the police verification under Rule 14, which permits thirty days time for submission of police report on receipt of the application, whereas Sl. No. 2 stipulates grant or refusal of a licence under Rule 13 and Column 4 stipulates sixty days time for such exercise after receipt of police report.

In view of the discussions made above, it is quite clear that the order passed by the Respondent No. 2, District Magistrate, Patna as contained in Annexure 5 is totally perverse. Accordingly, the same is set aside. It is expected from the Respondent No. 2, District Magistrate, Patna to take a final decision afresh on the application of the petitioner, keeping in view the provision under Rule 25 and Rule 12(3) of Rules, 2016 within a period of eight weeks from the date of receipt/production of a copy of this order.

This writ application is accordingly allowed.