

(2013) 09 AHC CK 0182

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 54425 of 2012

Sant Ram Pandey

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 30-09-2013

Acts Referred:

Citation : (2013) 9 ADJ 526 : (2014) 4 ALJ 196 : (2013) 83 ALLCC 828

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Namit Srivastava and Parul Srivastava, for the Appellant;

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—Heard the learned counsel for the petitioner and the learned Standing Counsel. The petitioner while serving in the Army and posted at Delhi applied for an arms licence, which was sanctioned by the Deputy Commissioner of Police (Licensing), Delhi on 31st January, 2005. The weapon was required to be purchased by the petitioner from the Defence Ordinance, Jabalpur. The allotment order fructified on 1st May, 2006. The petitioner received the weapon and got it endorsed on the licence on 5th September, 2006.

2. In the meanwhile, the petitioner retired from service on 31st July, 2005 and got re-employed again w.e.f. 1st August, 2005 in the Army Base Workshop, Chheoki, Allahabad. Since the licence was valid only for the territory of Delhi, the petitioner could not bring his weapon to Allahabad and accordingly, deposited the weapon with the Army Workshop, Delhi. The petitioner applied for a licence on an All India basis on 16th September, 2006 before the Deputy Commissioner of Police (Licensing), Delhi. Simultaneously, the petitioner also applied for an arms licence on an All India basis before the District Magistrate, Allahabad. The Deputy Commissioner of Police (Licensing), Delhi by an order dated 26th December, 2006 held that there was no need to apply for extension of the area of the arms licence and that necessary endorsement could be made by the Licensing

Authority at Allahabad on account of change of residence of the petitioner. Accordingly, the Deputy Commissioner of Police (Licensing), Delhi issued a transport licence for a period of 15 days to enable the petitioner to carry the weapon from Delhi to Allahabad.

3. Based on the said order, the petitioner brought the weapon to Allahabad and deposited the same to an Arms dealer on a monthly rent of Rs. 100/-per month. The petitioner also informed the District Magistrate by a letter dated 2nd January, 2007 and requested the authority to make necessary endorsement on his licence and issue a no objection certificate. This application was forwarded by the office of the District Magistrate to the Deputy Commissioner of Police (Licensing), Delhi for extension of the licence on the ground that the licence was issued by the Deputy Commissioner of Police (Licensing), Delhi and the area of the licence could only be extended by that authority.

4. The Deputy Commissioner of Police (Licensing), Delhi, upon receipt of the aforesaid letter, returned the original application back to the office of the District Magistrate, Allahabad with the endorsement that the area extension of the licence could not be granted by the authority at Delhi, since the petitioner was no longer residing at Delhi and that he was now residing at Allahabad. The Delhi authority also reminded the Allahabad authority to consider the provision of Rule 62(3) and (4) of the Arms Rules, 1962, which provides that on account of the change of residence, the Licensing Authority of that area where the petitioner now resides could make the necessary endorsement of change of address under intimation to the original Licensing Authority, who granted the licence. The Delhi authority further intimated that in case of any difficulty, the Licensing Authority at Allahabad could seek clarification from the Government by another letter dated 28th August, 2007. The Deputy Commissioner of Police (Licensing), Delhi again requested the authorities at Allahabad to register the weapon of the petitioner at Allahabad in order to avoid inconvenience to the petitioner.

5. The petitioner being made to run from one authority to another accordingly filed Writ Petition (C) No. 6198 of 2007 before the Delhi High Court, wherein the counsel appearing for the State of U.P. made a concession that in the event, the petitioner applies before the Allahabad authority for necessary endorsement under Rule 62(3) and (4) of the Arms Rules, 1962, the same would be considered and that an endorsement would be made by the Licensing Authority at Allahabad.

6. Based on this order, the petitioner pursued the matter at Allahabad and, when everything failed, the petitioner was forced to file Writ Petition No. 50067 of 2007, wherein the petitioner prayed that the Licensing Authority at Allahabad should make the necessary endorsement about the change of his address in accordance with Rule 62(3) and (4) of the Arms Rules, 1962. The Licensing Authority in their counter-affidavit, took a stand that requisite orders were not being passed for the reason that the petitioner's application was not in accordance with Rule 62(3) and (4) of the Arms Rules, 1962. The writ Court

disposed of the writ petition by an order dated 3rd May, 2012 directing the authority to pass appropriate orders either making an endorsement or refusing to make an endorsement as the Licensing Authority was under an obligation to pass an order on the application of the petitioner. Based on such order, the Licensing Authority at Allahabad passed the impugned order dated 29th August, 2012 refusing to make an endorsement on the petitioner's licence and directing the petitioner to approach the Deputy Commissioner of Police (Licensing), Delhi for extension of the area. The petitioner, being aggrieved, by the said order has filed the present writ petition.

7. Having heard the learned counsel for the parties and having perused the record, the Court finds that there has been a total non-application of mind by the Licensing Authority. The petitioner is unnecessarily being harassed for no rhyme or reason. No doubt, the petitioner's initial application was for extension of the licence on an All India basis. The Deputy Commissioner of Police (Licensing), Delhi, by an order dated 26th December, 2006, had clearly spelt that there was no necessity to get the licence extended on an All India basis as necessary endorsement could be made at Allahabad on account of change of address. In spite of the order of Deputy Commissioner of Police (Licensing) Delhi, the application of the petitioner dated 2nd January, 2007 was unnecessarily forwarded by the office of the District Magistrate, Allahabad to the Deputy Commissioner of Police (Licensing), Delhi for extension of the area, which was duly returned by the office of the Deputy Commissioner of Police (Licensing), Delhi in original with the endorsement that the licence of the petitioner cannot be extended at Delhi since the petitioner was no longer residing at Delhi and that necessary endorsement about change of address can be done under Rule 62(3) and (4) of the Arms Rules, 1962. In spite of clear directions issued by the Licensing Authority of Delhi, no action was taken by the Licensing Authority at Allahabad and the petitioner was forced to file Writ Petition No. 50067 of 2007, in which a stand was taken by the Licensing Authority about non-compliance of Rule 62(3) and (4) of the Arms Rules, 1962, and now, the Licensing Authority by the impugned order takes a somersault and passes an order that the petitioner is required to obtain a licence for extension of the area from the Licensing Authority at Delhi. It is a clear case of dereliction of duty and non application of mind by the Licensing Authority.

8. The petitioner's licence was only valid for the territorial limits of Delhi. The area can be extended by the appropriate authority of Delhi but since the petitioner was not residing there any longer, such extension cannot be done by the Licensing Authority of Delhi. The petitioner by virtue of his re-employment is now residing at Allahabad since 1st August, 2005 and, consequently, was justified in moving an application under Rule 62 of the Arms Rules, 1962. For facility, the said provision is extracted hereunder:

62. Production of licences

(1) Any person who-

(a) holds a licence, granted or renewed or a pass, permit or certificate granted under these rules, or

(b) is acting under colour of such licence, pass, permit or certificate, shall forthwith produce such licence, pass, permit or certificate upon demand by any Magistrate or any police officer of a rank not below that of an officer-in charge of a police station.

(2) While granting or renewing a licence, no authority shall impose a condition inconsistent with sub-rule (1)-

[(3) If a person who holds a licence in Form III changes his place of residence, permanently, or temporarily for more than thirty consecutive days and carries with him the weapon covered by the licence, to a place other than that indicated in Col. (2) of the licence, he shall [within thirty days of such change], send intimation about such change to the licensing authority of the place of his new residence as well as to the authority which granted the licence or last renewed it, as the case may be; and shall, on demand, forth with produce the licence and the weapon to the first-mentioned authority for making necessary entry in the licence to indicate therein the particulars of the new residence of the licensee.]

(4) The licensee shall intimate within a period of thirty days in regard to change of residence to the licensing authority of the new place of his residence and produce his licence before the licensing authority of the new place for appropriate endorsement. On such change of residence and after such endorsement on the licence, the said licence shall be deemed to have been transferred to the jurisdiction of the licensing authority and renewing authority of the new place of residence and such authority shall be the licensing authority and the renewing authority in relation to the said licence for purposes of the provisions of the Arms Act, 1959 and the Arms Rules, 1962.

9. Sub-rule (3) of Rule 62 of the Arms Rules, 1962 provides that where a person who holds a licence changes his place of residence permanently or temporarily, he shall sent such intimation about such change to the Licensing Authority of the place or his new residence as well as to the authority, which granted the licence and shall produce the licence and the weapon to the authority for making necessary entry in the licence to indicate the particulars of the new residence of the licensee. Sub-rule (4) of Rule 62 of the Arms Rules, 1962 provides that upon such endorsement of the change of residence made on the licence, the said licence would be deemed to have been transferred to the jurisdiction of the Licensing Authority and Renewing Authority of the new place of residence and such authority would be the Licensing Authority in relation to that such licence.

10. In the instant case, there is no dispute that the petitioner was residing earlier at Delhi and was validly sanctioned a licence from the Licensing Authority at Delhi. There is also no dispute that the petitioner upon retirement was re-employed in the Army Base Workshop, Chheoki at Allahabad on account of which his residence changed from Delhi to Allahabad. There is also no dispute that the

petitioner intimated his change of his residence to the Licensing Authority at Delhi, who by an order directed the petitioner to transport his weapon from Delhi to Allahabad and get the necessary endorsement on his licence of his change of residence from the Licensing Authority at Allahabad. There is also no dispute that the petitioner moved an application before the Licensing Authority at Allahabad for endorsement of his new address in terms of Rule 62(3) and (4) of the Arms Rules.

11. In the light of the aforesaid sequence, coupled with the fact that the petitioner also intimated the Licensing Authority that he was paying Rs. 100/- per month towards rent to the arms dealer, there was no justification on the part of the Licensing Authority to hold on to the application for all these years and eventually, rejecting it on absurd grounds, which does not exist.

12. The petitioner has spent approximately Rs. 7000/- towards rent from 2nd January, 2007 onwards and the petitioner was unnecessarily dragged into litigation. The Court is of the opinion that exemplary cost is required to be paid by the Licensing Authority of Allahabad.

13. For the reasons stated aforesaid, the impugned order cannot be sustained and is quashed. The writ petition is allowed. A writ of mandamus is issued directing the Licensing Authority, Allahabad to make the necessary endorsement on the petitioner's licence under Rule 62(3) and (4) of the Arms Rules within a week from the date of receipt of certified copy of this order and pay Rs. 15,000/- as cost of this litigation to the petitioner within the same period. In the event the amount is not paid, it would be open to the petitioner to move an appropriate application before this Court for appropriate orders.