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## Brij Nandan Singh Vs State of U.P. and Another

Writ C No. 61381 of 2011

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**Court:** Allahabad High Court

**Date of Decision:** Nov. 18, 2011

**Acts Referred:**

Arms Act, 1959 " Section 13, 18#Constitution of India, 1950 " Article 226#Contempt of Courts Act, 1971 " Section 2

**Citation:** (2012) ACR 1649

**Hon'ble Judges:** Sudhir Agarwal, J

**Bench:** Single Bench

**Final Decision:** Allowed

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### Judgement

Hon"ble Sudhir Agarwal, J.

The petitioner has come to this Court for the third time in a simple matter for a decision on his application for

firearm licence u/s 13 of the Arms Act, 1959 (hereinafter referred to as Act). The application was filed before the District Magistrate, Deoria -

respondent no. 2 on 13.8.2008. It remained pending for almost two years whereafter the petitioner came to this Court in Civil Misc. Writ Petition

no. 46002 of 2010 raising his grievance of inaction on the part of District Magistrate in deciding his application. The writ petition was disposed of

on 5.8.2010 directing the licencing authority (respondent no. 2) to consider petitioner"s grievance and take decision on his application within a

period of four months from the date of production of certified copy of the order before him. Consequently, by order dated 25/27.1.2011 District

Magistrate, Deoria rejected his application on the ground that though Police has not raised any objection for grant of licence to petitioner, but in the

application petitioner has not given any special reason or circumstances justifying grant of firearm licence to him and, therefore, there is no

justification for granting licence to the petitioner. The ground mentioned in the order dated 25/27.1.2011 by District Magistrate, Deoria may be

reproduced as under:

2. Aggrieved thereto the petitioner preferred appeal under Section-18 before Commissioner, Gorakhpur vide memo of appeal dated 10.2.2011.

The appeal was rejected vide order dated 12th May, 2011. Both these orders dated 25/27.1.2011 and 12.5.2011 were assailed in the writ

petition no. 45472 of 2011. The writ petition was allowed. Both these orders were quashed and District Magistrate was directed to pass fresh

order in the light of observation made in the judgment dated 11.8.2011 and also in accordance with law. The District Magistrate was required to

pass fresh order within one month from the date of production of certified copy of that order.

3. Pursuant thereto, District Magistrate has passed order reiterating verbatim same reason as was given by the erstwhile District Magistrate in his

order dated 25/27.1.2011 and petitioner's application has again been rejected. The impugned order dated 29.9.2011 containing reasons for

denial of fire arm licence reads as under:

4. A perusal of the impugned order, in fact shows that the District Magistrate not only has justified earlier order of licensing authority but has also

said that the same is proved correct as if the High Court committed a glaring error in setting aside the order.

5. Learned counsel for the petitioner contended that the reason, which this court did not find just and legal to uphold the order of rejection of fire

arm licence application, has been reiterated by the District Magistrate with impunity ignoring the judgment of this Court and making observation

therein to the extent of upholding order of his successor, which has already been set aside by this Court. This shows as if he has sat over the High

Court's order, which ex-facie amounts to criminal contempt, as defined in the Contempt of Courts Act, 1971 (for short "Act of 1971"). Besides,

vitiating the order, since the District Magistrate lacked such authority and jurisdiction, the impugned order is wholly illegal and without jurisdiction.

6. Learned standing counsel, when confronted with above situation, could not give any reply. Initially, in the circumstances, this court passed order

dated 26.10.2011, relevant extract whereof reads as under:

2. Having gone through the record, I find substance in the submission. Prima facie it appears that District Magistrate is in contempt of order of this

Court. Let the respondent no. 2 be appeared before this Court on 08.11.2011 to explain as to in what circumstances he instead of going through

the judgment of this Court, in a mechanical manner has passed an order virtually in identical terms in which earlier order was passed which was set

aside by this Court. The concerned officer who held the office of District Magistrate, Deoria on 29.09.2011 shall appear on the next date.

3. List/put up this matter on 08.11.2011.

7. Shri Rishikesh Bhaskar Yashod, District Magistrate, Deoria has appeared and filed a short affidavit. He states that he joined as District

Magistrate, Deoria on 23.9.2011. In para 6 he says that he has committed mistake in passing order dated 29.9.2011 and has rectified the mistake

by recalling the said order, and passing another order dated 2.11.2011 granting licence to the petitioner. The Officer concerned, when inquired,

admitted that he has read the judgment of this court and understood the same. He, however, could not explain as to what distinction he could find

in order passed by his predecessor in his office, which was set aside by this court and the order impugned in this writ petition. He also could not

dispute that once the order is set aside by the High Court and the judgment has attained finality the order, which is set aside becomes nonest, and,

therefore, there was no occasion for him to uphold and rely upon such nonest order in the impugned order.

8. Learned Chief standing counsel states that he is not making submission, since the impugned order is un-defendable, but requests this court to

show benevolence and magnanimity, since the Officer concerned is a young officer having not much experience as District Magistrate. He said that

it is his third posting as District Magistrate. Earlier for a short time i.e about seven months he worked as District Magistrate, Auriya and then at

Lakhimpur for about one and half months.

9. Shri Rishikesh Bhaskar Yashod, District Magistrate, Deoria is present in Court and stated that he is a member of Indian Administrative Service

of 2006 batch and has served the department only for about five years, therefore, any stern action by the Court may likely marr his career, hence

this Court may take the matter large hearted and excuse his mistake.

10. I have heard learned counsel appearing for the respective parties including the official, present in person, as stated above. This court when

passed the order on 26.10.2011 never intended that the District Magistrate should exercise his statutory discretion u/s 13 of the Act in a particular

manner namely, by granting fire arm licence to the petitioner. It was always open to the officer concerned to exercise his power on relevant

consideration in the manner as contemplated in law. It was also always open to him either to grant licence to the petitioner or decline thereto. The

Court had no inclination in a particular result, but what pained and disturbed the Court is the contents of order dated 29.9.2011 impugned in this

writ petition wherein the present District Magistrate has appreciated, approved and affirmed the reasoning of his predecessor in the office

contained in the earlier order dated 25/27.1.2011, despite the fact that the said reasoning were not approved by this Court and the aforesaid order

was already set aside having the effect of nullifying and making the order nonest. The direct consequence and result of the judgment dated

11.8.2011 would be that the reasoning assigned in the order of the licencing and appellate authorities, which were not approved by this Court,

could not have been reiterated, reaffirmed and followed by the District Magistrate though it was open to him to decline grant of fire arm licence to

the petitioner for other valid reasons, as may borne out from the material on record available before him.

11. It is not the case where the present District Magistrate, when passed the impugned order, was ignorant of the judgment, since he has admitted

to have read the judgment and claimed to have passed the impugned order after reading and understanding the exposition of law discussed by the

Court in the aforesaid judgment. He also admitted to have knowledge of the earlier order passed by the District Magistrate, which no more survive

having been set aside by this Court and it is for this reason the present officer was directed to pass fresh order. Despite all these informations and

knowledge the District Magistrate has proceeded to reaffirm and reiterate the same reasoning, which was not approved by this Court, and has

further observed that earlier order of his predecessor in the office was correct. He has clearly shown audacity by saying by that by necessary

implication the High Court erred in setting aside the earlier order of licensing authority.

12. It is not disputed by learned Chief Standing Counsel that this approach and aptitude of District Magistrate is clearly impermissible in law. This

is fortified from the fact that the officer concerned after receiving this Court's order dated 26.10.2011, chose to recall the order dated 29.9.2011,

impugned in this writ petition, and passed fresh order. Unfortunately, even this exercise is impermissible in law inasmuch as the District Magistrate

possess no power of review under the Act and so long as matter is pending before this Court had no authority or jurisdiction to pass fresh order

recalling his order of rejection of fire arm licence application. Here also, the concerned District Magistrate has proceeded illegally.

13. The statutory order cannot be recalled or reviewed by the same authority unless such power is conferred by the statute or it is brought to his

notice that the order has been obtained by playing fraud and misrepresentation, which is not the case here.

14. Be that as it may, since fresh order has been passed by the District Magistrate, in order to cut short the litigation, this Court finds it appropriate

to formally declare the order dated 29.9.2011 illegal and to quash the same and this would set the record straight.

15. The matter, however, does not rest here. The question would be whether the conduct and approach of the District Magistrate in showing the

audacity ignoring the judgment of this Court and making observation, which tends or amounts to lower down the authority of this Court, should be

simply condoned or needs further proceeding.

16. This Court has no manner of doubt that ex facie the observations, as discussed above, made by Shri Rishikesh Bhaskar Yashod, holding the

office of District Magistrate, Deoria at present, satisfy the requirement of ""Criminal Contempt"" as defined u/s 2 (c) of the contempt of Courts Act,

1971 (for short ""1971 Act), therefore, I was initially seriously inclined to refer the matter for further proceeding to the Court assigned the

jurisdiction of matter relating to criminal contempt, but there are some aspects which by a hair width distance has helped the official concerned and

persuaded this Court to take some other measure so that the entire career of this young officer may not suffer.

17. Though this is the third posting of the officer concerned, but obviously, he has worked for short time in all these places and in Deoria within a

week of his posting the impugned order was passed. Though the officer concerned is expected to know the constitutional authority of the Court of

record like the High Court and the Supreme Court, but it appears that appropriate training in this respect is not being imparted to these officers as

a result thereof sometimes they fail to understand the consequences of administrative order(s) set aside by a Court of law and the manner in which

they should work and proceed thereafter. This is serious situation, but I do not intend to blame this officer alone and, in my view, it is for the

government itself to look into this aspect of the matter and take appropriate measures.

18. A Court of law, in particular the High Court, while exercising power under Article 226 of the Constitution of India mainly scrutinize and test the

legality of administrative action/orders and that is how virtually bureaucracy comes under scrutiny before this Court in writ jurisdiction. The

executive should not take the Court's decisions and observations as adversary, but they are clarificatory and corrective. The function of judiciary is

to set the executive right whereof in furtherance of its executive action, it has erred or defaulted. The judicial orders, therefore, ought to be taken in

right perspective. This officer's little experience, long career and unconditional apology, though with reluctance, persuaded this Court not to take

this matter further, but, in the facts and circumstances of the present case, I allow this writ petition in the following manner:

1. Order dated 29.9.2011 is declared wholly illegal and void ab initio and is hereby set aside.

2. The petitioner having been harassed for this avoidable litigation is entitled to cost, which I quantify to Rs. 10,000/- (Rs. Ten Thousand only)

against respondent no. 2, which shall be paid to the petitioner within a period of one month from the date of communication of this order.

3. Shri Rishikesh Bhaskar Yashod, District Magistrate, Deoria is warned and is directed to remain more careful in future so that the situation, like

present one, may not occur.

Tuesday, April 24, 2012