

(2013) 12 AHC CK 0125

Allahabad High Court

Case No: C.M.W.P. No. 65647 of 2013

Chandraraj Tripathi

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Dec. 10, 2013**Citation:** (2014) 1 ACR 1081 : (2014) 1 ADJ 422**Hon'ble Judges:** Tarun Agarwala, J**Bench:** Single Bench**Final Decision:** Allowed

Judgement

Tarun Agarwala, J.

At the relevant moment of time, the petitioner was working as a cashier in a Bank in district Banda. The petitioner applied for an arms licence on 22.3.2005 perceiving threat of his life while discharging functions of a cashier in the Bank. It was stated that he was required to carry cash from one place to another place for more than 25 kms. and, therefore, for his protection it was necessary to have a weapon. This application was entertained and was processed. The antecedents of the petitioner and the threats, if any, was called by the District Magistrate from the police authority. The relevant police station, after due enquiry, submitted a report recommending grant of a licence to the petitioner. According to the police, the petitioner perceived grave and imminent threat to his life. In spite of this recommendation, the District Magistrate did nothing on the petitioner's application. The petitioner after waiting for four years and being fed up by the inaction of the district administration approached the writ Court by filing Writ Petition No. 37307 of 2009, which was disposed of by an order dated 28.7.2009 directing the District Magistrate to decide the petitioner's application for grant of an arms licence within two months from the date of production of a certified copy of the order.

2. On the basis of this direction, the District Magistrate rejected the petitioner's application by an order dated 4.1.2010 holding that even though the police may have given a report in favour of the petitioner, nonetheless, since no proof of threat

was indicated by the petitioner, the application for grant of an arms licence could not be considered and was, accordingly, rejected.

3. The petitioner being aggrieved, filed an appeal under the Arms Act, which was allowed by an order dated 30.9.2010. The appellate authority considered the police report and finding that the petitioner, being a cashier, was required to transport cash from one Bank to another, had a genuine reason for applying for an arms licence. On this finding, the appellate authority set aside the order of the District Magistrate and directed him to decide the matter afresh in the light of the observations made thereunder. The order was placed before the District Magistrate immediately thereafter and for the last three years no orders was passed by the District Magistrate and the petitioner's application remained unaddressed. The petitioner again approached the writ court and filed the present writ petition. This Court entertained the writ petition and issued an interim order dated 2.12.2013, which is extracted hereunder:

4. "Learned standing counsel will file a personal affidavit of the District Magistrate indicating as to why he has not complied with the order of the appellate authority.

List on 10.12.2013."

5. This Court directed the District Magistrate as to why he had not complied with the order of the appellate authority.

6. Today an affidavit of compliance has been filed indicating that the District Magistrate has issued an order dated 5.12.2013 rejecting the petitioner's application for grant of an arms licence on the ground that as per police report:

(1) the petitioner does not face any grave or imminent threat of his life:

(2) as per the Government Order dated 31.3.2010 application for grant of an arms licence would be considered from such persons, who face or perceive grave or imminent threat to their lives, which in the instant case was not existing;

(3) Lucknow Bench of this High Court in Writ Petition No. 3268 (MB) of 2013, Jitendra Singh v. State of U.P., and others has issued interim orders dated 7.10.2013 and 25.11.2013 directing that no fresh licence under the Arms Act would be issued; and

(4) based on such direction, the State Government issued a Government Order dated 8.11.2013 directing all the District Magistrates not to issue a fresh licence except to those persons, who are applying the licence as an heir and who are victims of crime.

7. The affidavit of compliance further indicate that the deponent had joined the office of the District Magistrate only on 28.9.2013 and that he was unaware of the directions of the appellate authority and only came to know when the order of the Court dated 2.12.2013 was brought to his knowledge and, accordingly, the application of the petitioner was considered and order dated 5.12.2013 was passed.

8. Having heard the learned counsel for the petitioner and the learned Additional Chief Standing Counsel, the Court is constrained to observe the manner and functioning of the District Magistrate, Banda and his office. No action was taken on the petitioner's application and it is only when the Court issued an order on 2.12.2013 then a police report was called, which is dated 4.12.2013 and the order was passed on 5.12.2013. The Court doubts the veracity of the police report. The Court gets an uncanny feeling that a perfunctory exercise was done by the police and the report was submitted without any basis. Nothing has been indicated as to why the earlier report given by the same police station had become redundant.

9. The Court is also constrained to observe that the mere fact that the District Magistrate has taken charge on 28.9.2013 does not absolve him for not giving the reason before this Court as to why the application of the petitioner remained unaddressed. The District Magistrate was required to hold an enquiry and take action against the erring official, if any. The District Magistrate cannot shirk from his duty by brushing it aside on the mere pretext that he took the charge on 28.9.2013.

10. On the merits of the order of the District Magistrate, Banda, the Court finds that the earlier police report was in consonance with the Government Order dated 31.3.2010, which recommended that on account of the job of the petitioner he could perceive or face threat to his life. This report was found to be genuine by the appellate authority and on that basis the District Magistrate was required to act upon but he failed to do so for three years and only acted upon a report, which was hurriedly prepared within 24 hours, when the Court issued a direction on 2.12.2013. Such subsequent police report, which has been submitted without any application of mind and without due enquiry, cannot be taken into consideration.

11. The Court finds that the order of the Division Bench has wrongly been interpreted. For facility, the extract of the order dated 7.10.2013 is quoted hereunder:

Till then, no fresh licences under the Arms Act will be issued in the State of Uttar Pradesh. This order will however, not apply to applicants claiming licence under family heirloom policy and to victims of crime, having genuine need of weapon in the opinion of concerned District Magistrate.

12. According to the Division Bench no fresh licence would be granted under the Arms Act but will not include-

(a) applicants who have applied as an heir;

(b) applicants who are victims of crime; and

(c) applicants having genuine need of weapon in the opinion of the concerned District Magistrate.

13. The Government Order dated 8.11.2013 wrongly interpreted the order of the Court and has wrongly issued a direction in its order dated 8.11.2013 directing all the prescribed authorities not to grant fresh licence except to those applicants who are heirs and who are victims of crime. The Government excluded the third direction namely, the applicants having a genuine need of weapon in the opinion of the concerned District Magistrate.

14. In the light of the aforesaid, the Government Order dated 31.3.2010, the order of the Division Bench dated 7.10.2013 do not come in the way of the District Magistrate in rejecting the petitioner's application. The Government Order dated 8.11.2013, which flows from the interim order of the High Court is erroneous and is required to be corrected by the State Government.

15. Since the affidavit of compliance has been filed today, the petitioner has not been given a chance to amend the writ petition and even though the petitioner has a remedy of filing an appeal, the Court is of the opinion that relegating the petitioner to the remedy of appeal in the instant case is not an efficacious remedy. The petitioner's application has remained pending since the year 2005. There is a threat to his life as per the police report. Such police report is still existing. The perception of threat is imminent and as per the Government Order dated 31.3.2010, the application was required to be considered in the right prospective as well as on the basis of the observation made by the appellate authority.

16. The Court consequently, finds that the order of the District Magistrate dated 5.12.2013 cannot be sustained and even though the petitioner has not made a prayer for the quashing of the order, the Court suo motu takes cognizance and quashes the order as being patently erroneous and has been passed without any application of mind. It is a clear case where the authority has closed its mind for not granting a licence for vested reasons without following the law prescribed by the Statute.

17. For the reasons stated aforesaid, the writ petition is allowed. The order of the District Magistrate, Banda is quashed and, in the given circumstances, a writ of mandamus is issued commanding the District Magistrate, Banda to reconsider the matter in the light of the observation made aforesaid and pass a speaking order within two weeks from the date of production of a certified copy of this order after hearing the petitioner.

18. Simultaneously, the Secretary, Home Department of the State Government is directed to correct the Government Order dated 8.11.2013 in the light of the observations made aforesaid and such Government Order should be circulated to all the concerned Magistrates within two weeks.

19. The Additional Chief Standing Counsel will ensure that a certified copy of this order is sent to the Secretary concerned as early as possible.