

(1992) 05 AHC CK 0105

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 2109 of 1979

Smt. Vidyadevi

APPELLANT

Vs

The District Magistrate

RESPONDENT

Date of Decision: May 11, 1992

Acts Referred:

- Arms Rules, 1962 - Rule 52, 52(2)
- Constitution of India, 1950 - Article 19, 22, 226

Citation: (1993) 1 AWC 75

Hon'ble Judges: O.P. Pardhan, J; B.L. Yadav, J

Bench: Division Bench

Advocate: Yatindra Singh, for the Appellant;

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

B.L. Yadav, J.

The main question involved in this writ petition is as to whether the arm obtained against a valid license, in view of the provisions of Arms Act 1958 (for short, the Act) can be directed to be deposited, even though there was no infirmity in the license, is the short question for our determination in the present petition tiled by the Petitioner under Article 226 of the Constitution.

2. The relief sought in the writ petition tiled by Smt. Vidhya Devi under Article 226 of the Constitution is that the impugned order dated 29th December, 1978 (Annexure 2 to the writ petition) may be quashed by issuing writ of certiorari.

3. The factual matrix of the case is that the Petitioner is wife of one Sri. Murli Monohar, Chaubey, the ex-ruler of Taron State in District Banda, and she was holding a valid license for rifle under the Act she purchased rifle on 23rd September, 1978 from one Ram Siya Shukla, a valid license holder. The Petitioner, thereafter,

moved an application on 25th September, 1978 to the District Magistrate that she had purchased the rifle and prayed for making proper entry to the same effect that she had already purchased the rifle in pursuance of the arm license granted to her. Again she moved an application for reminder on 27th December 1978 but to the utter surprise of the Petitioner instead of ranking the entry the District Magistrate passed the impugned order dated 29th December, 1978, which was quite vague and was to the following effect: seen The applicant be advised accordingly. If the weapon had been purchased he should return it to the dealer at once who in turn will intimate the office since the license of the weapon has already been suspended. The applicant be advised to purchase a fresh weapon. The dealer will keep the weapon till fresh order.

4. The aforesaid impugned order does not make any sense, as the facts are incorrect and it is based on ipse-dixit.

5. Counter-affidavit, has been filed on behalf of the State in para 4 of the counter-affidavit, the impugned order was supported, indicating that the license of the vendor, Ram Siya Shukla has been suspended and he has not complied with the Rule 52(2) of the Rules framed under the Act.

6. Mr. Yatindra Singh, learned Counsel for the Petitioner urged that the Petitioner and vendor, Ram Siya Shukla were holding valid license for a rifle on the date she purchased the rifle and the vendor, Ram Siya Shukla was also holding valid license. As the license has become property held by the Petitioner, within the meaning of Articles 19 and 22 of the Constitution of India, the license was his property and fundamental right. The impugned order contains incorrect statement of facts and does not contain reasons. The Petitioner cannot be directed to deposit the rifle with the dealer as if license of vendor has already been suspended whereas the correct facts are that on the date of purchase by the Petitioner from Ram Siya Shukla, vendor and the vendee both were having valid licenses. License of the Petitioner cannot be suspended without affording any opportunity of hearing to the Petitioner. As the impugned order affected rights of the Petitioner pre-decisional hearing was a must. The impugned order cannot be supported on the basis of averments in Para 4 of the counter-affidavit.

7. The learned Standing Counsel has supported the impugned order. He urged that there was defect in the license of Siya Ram Shukla, vendor and an enquiry was also pending against him. As the Petitioner shall have a right to prefer an appeal, hence even if no opportunity for pre-decisional hearing was granted, there was no error apparent on the face of the record.

8. Having heard learned Counsel for the parties, we are of the opinion that the impugned order cannot be sustained. The Petitioner had the valid license for rifle on 23rd September, 1978, the date she purchased the rifle from Ram Siya Shukla, who was also holding valid license. On that date, the Petitioner had moved an application

to enter rifle in her license in view of the provisions of Rule 52(2) of the Arms Rules, 1962 framed under the Act. Rule 52 required that in case a license was granted to a person, other than a tourist, for more than a year, the authority granting the license shall direct that after purchase of the arm within a period specified, the licensee shall produce the same for inspection and for entry being made to that effect in the license form. The reminder was, also sent by the Petitioner for making entry in the license Form, as provided under Rule 52(2). The Impugned order has been passed on that application.

9. Observations made in the impugned order indicate that the Petitioner must return the weapon to the dealer as the license of the dealer has been suspended. It does not indicate as to whether the Petitioner's license has been suspended or that of the vendor of the Petitioner. In fact on the date of the order, both the licenses were valid. The impugned order appears to be based on pie-dixit of the Authority passing the order. Nothing is decipherable from the impugned order and if it is possible, it is based on incorrect facts. The Petitioner was holding a valid license and she purchased the rifle from the vendor, who was also holding a valid license. Consequently, observation made in the impugned order that the license has already been suspended, was incorrect.

10. As regards the violation of principles of Natural justice suffice it to say that these days the principles of natural justice have received multi-dimensional proportions and recording of reasons is one of the objects of the principles of natural justice. The District Magistrate, Banda was exercising a quasi-judicial function, hence while deciding the question of license, the recording of reasons was a must even if the Petitioner might have a right of appeal. In fact the object underlying the rules of natural justice is to prevent mis-carriage of justice and at the same time to secure fair play in action. The recording of reasons is necessary to rule out the possibility of arbitrariness and to ensure sufficient degree of fairness in the process of decision making (see [S.N. Mukherjee Vs. Union of India](#), .

11. A bare perusal of the impugned order would make it evident that there were no reasons recorded in the impugned order.

12. As regards the opportunity of hearing being afforded or not to the Petitioner before taking any action or passing an order against him, a part from other Latin-Maxims, the relevant for our purpose is QUI ALIQUIT STATUCROT PARTE INAUDITA ALTERA V"QULI.W LICET D1XERT HA WD ACQUUM FACERIT. which connotes that he who shall decide anything, without the other side having been heard, although he may have said what is right, will not have done what is right.

13. Certain American decisions may also be noticed pertaining to principles of natural justice.

14. In Cleveland Board of Education v. James Louder will 470 US 532 84 LEd 494 it was held as follows:

An essential principle of due process is that a deprivation of life, liberty or property be preceded by notice and opportunity of hearing appropriate to the nature of case. We have described that root requirement of the due process Clause as being that an individual be given an opportunity for a hearing before he is deprived of any significant property.

15. In the present case, we are satisfied that the Petitioner made an application for an entry being made in her license in view of Rule 52(2) of the Rules and give a reminder on that without serving any notice on the Petitioner or affording any opportunity of hearing, the impugned order has been passed making incorrect statement of facts and recording no reasons. Even if against that order, an appeal could have been filed but this is no reason for not affording opportunity of hearing. The jurisprudence pertaining to the principles of natural justice is expanding its horizon day by day. What is assuming importance is fairness of procedure, what is a fundamental principle of good administration. Further, the principle is that justice must not only be done but must appear to have been done. In the present Case pre-decisional hearing was a must, even if the Petitioner has an opportunity of preferring an appeal against the impugned order.

16. In view of the premises aforesaid, we are satisfied that the Petitioner was holding valid license and she purchased the rifle from Ram Siya Shukla. The Petitioner was holding valid license, hence the arm purchased by; the Petitioner cannot be directed to be deposited, nor she can be directed to purchase fresh arm without affording opportunity of hearing to her. The impugned order cannot be sustained.

17. We accordingly allow the present writ petition and issue writ of certiorari and quash the impugned order dated 29th December, 1978 (Annexure-2 to the writ petition), and direct the Respondents not to interfere in any way with the license and arms held by the Petitioner. There shall be no order as to costs.