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Date: 24/10/2025

Pradeep Kumar Tewari Vs State of U.P. and Others

Civil Miscellaneous Writ Petition No. 57023 of 2011

Court: Allahabad High Court

Date of Decision: Nov. 18, 2011

Acts Referred:
Arms Act, 1959 â€" Section 13

Citation: (2012) ACR 1664 : (2012) 1 ADJ 91

Hon'ble Judges: Sudhir Agarwal, J

Bench: Single Bench

Final Decision: Disposed Of

Judgement

Hon"ble Sudhir Agarwal, J.
The petitioner is aggrieved by the total inaction on the part of the District Magistrate, Allahabad - respondent

No. 2 in not considering his application filed for grant of fire-arm licence u/s 13 of the Arms Act, 1959 (for short the Act) though it is allegedly

pending since 2001.

2. It is averred in the writ petition that the petitioner applied for fire-arm licence by submitting application on 6.6.2001, which was numbered as

Application No. 349 of 2001, whereupon report of police authority was also called for, but no order has been passed so far for no valid reason.

The competent authority - respondent No. 2 is sitting tight over the matter for the last almost one decade. Since lot of writ petitions are coming to

this Court raising similar grievance complaining inaction for period ranging for few months to few years, this Court noticing that here matter is

pending for last almost a decade passed following order on 29.9.2011:

Put up tomorrow to enable learned Standing Counsel to seek instructions as to how application for grant of firearm licence is pending for the last

ten years and no orders has been passed.

3. Pursuant thereto on behalf of respondent No. 2 counter-affidavit sworn by Shri Manoj. Kumar, City Magistrate/Officer Incharge (Arms),

District Allahabad has been filed. Besides, an affidavit sworn by Shri Manoj Kumar (aforesaid) has also been filed separately with an attempt to

explain reasons for delay in disposal of such application. In the counter affidavit it has been stated that the petitioner did not file an application in

2001, but, in fact, submitted application u/s 13 of the Act on 8.6.2004. It is also said that the petitioner is permanent resident of village Sikandara,

P.S. Bahariya, District Allahabad, but did not disclose the said address in his application. On the contrary, he has given his current and permanent

address as 131B/90A/1B, Malakraj, District Allahabad and it is for this reason his application could not be disposed of. Respondent No. 2 has

prayed for dismissal of writ petition on the ground that petitioner is guilty of making wrong year of filing of application for grant of firearm licence

and also for giving wrong address in application dated 8.6.2004. It is said that due to wrong address the application was not traceable and for this

reason no appropriate decision could be taken earlier.

4. In the separate affidavit filed on behalf of respondent No. 2, it is said that under Arms Act and Rules framed thereunder no period has been

prescribed within which firearm licence ought to be granted or application be disposed of. Reference is made to the Full Bench Decision in Rana

Pratap Singh Vs. State of Uttar Pradesh, . It is said that in the office of respondent No. 2 two posts of arms clerk are sanctioned and no additional

staff has been provided for maintenance of application/records pertaining to firearm licence. In the last ten years, i.e. from year 2000 - 09, as per

upto date information, which is likely to be rectified, 28967 applications were received; while during this period licensing authority has granted

10445 fire-arms licences. It is said that more than 18000 applications are still pending, though the correct information is yet under inquiry. Being

Head of the district, the District Magistrate has multifarious duties relating to different departments besides pursuing pending Court cases. On

account of these activities, a very little time is available to licensing authority to take appropriate decision on Applications for firearm licence, yet

respondent No. 2 is trying his best to attend applications and decide at the earliest. Further, in view of G.O. and the vulnerability involved, in case

firearm licence is allowed to undeserved persons it may affect society otherwise. Quick decision on such application thus is not prudent and

possible. It is not delay, which is material, but appropriate and correct decision based on various reports from police authorities etc. received by

licensing authority, which is of more importance.

5. The reasons and anxiety shown by District Magistrate like short time available for disposal of such applications, lack of sufficient supporting

staff, multifarious duties assigned, time taken in considered decisions etc. is well understandable. These difficulties as such can neither be ignored

nor can be said inconsequential. However, before coming on this aspect of the matter, I would first like to consider the question, whether petitioner

is guilty of filing false affidavit justifying rejection of writ petition for this reason alone.

6. In the writ petition not only the date of filing of application being 6.6.2001 has been mentioned in paragraph 4, but even number on which

application is said to have been registered in the office of respondent No. 2 has been given. Annexure 1 to the writ petition refers to report of

tehsildar, Phoolpur and SDM, Phoolpur and are of the period 2001. In the said application, petitioner has given his address as village Sikandara,

P.S. Bahariya, District Allahabad.

7. Learned counsel for the petitioner stated that in 2001 when he filed application he was residing at village Sikandara, P.S. Bahariya, District

Allahabad. Later on, he came to reside at 131B/90A/1B, Malakraj, District Allahabad, therefore, submitted another application in 2004 with the

address at which he was residing in 2004. He said that none of the applications whether filed in 2001 or one filed in 2004 has been disposed of by

respondent No. 2.

8. For the moment I proceed to consider this matter as if petitioner moved application u/s 13 of the Act only on 8.6.2004, which is admitted by the

respondent. It is also not disputed that no final order thereon has been passed by respondent No. 2 till date. It is also evident from the counter

affidavit that on petitioner''s application dated 8.6.2004 report was submitted by various authorities in December, 2004 and April, 2005. Report

dated 1.12.2004 is signed by Sanjay Kumar Singh, S.I. stating that petitioner''s permanent address is village Sikandara, P.S. Bahariya, District

Allahabad and, therefore, recommendation for grant of licence should precede police report from P.S. Bahariya, District Allahabad. Thereafter,

S.O. P.S. Bahariya, District Allahabad submitted report on 10.1.2005. Where the matter remained pending thereafter and why no final order

could be passed on petitioner''s above application, as such, has not been stated any where. If the District Magistrate was of the opinion that

petitioner is guilty of giving wrong permanent address it had discretion to pass appropriate order accordingly, but the fact remains that no action

was taken whatsoever. It has also not been stated anywhere as to how and with whom petitioner''s file remained pending and, who is the person

responsible for keeping the matter in cold storage.

9. It is no matter of doubt that the Act 1959 as such does not prescribe any period within which application for firearm licence must be disposed,

but a provision has been made in the statute entitling a person to make application to grant some thing, but competent authority, who is authorised

and obliged to consider. The District Magistrate, therefore, is under a statutory obligation to pass an appropriate order on such application within a

reasonable time. What time shall be reasonable in a particular matter cannot be placed in straight jacket formula and shall depend upon the facts

and circumstances of the case, but, obviously, this reasonable time cannot extend to time immemorial or no limit. Seven years cannot be said to be

a reasonable time by any stretch of imagination in the present case.

10. Inaction and laxity on the part of respondent No. 2 is writ large. He provided no explanation whatsoever and, therefore, it comes within the

ambit of the term ''arbitrary''. Whenever a application for grant of firearm licence is given on the ground that the incumbent requires licence so as to

possess weapon for his personal safety and security, if such application is kept pending for years together particularly when there is no doubt in the

genuity of demand of the applicant that he requires licence for his safety and security, inaction for years together amounts to compromising with

such person''s safety and security by not allowing him to make his arrangement for his personal safety and security. A judicial cognizance can be

taken of the fact that crime chart in the State is continuously going high. The agency responsible for prevention, control and detection of crime is

more busy in preparing its record to show reduction in number of crimes reported instead of substantive work towards prevention, detection and

prosecution. Hike in crimes naturally means increase of number of criminals. It is a matter of fact that most of crimes are committed by illegal

weapons. The law enforcing machinery, virtually, has no control over illicit arms possessed by criminals. Number of police personnel assigned duty

of protection of people, is extremely inadequate. The Government is not in a position to provide any kind of certainty about protection of one''s life

and liberty to himself and his property.

11. I need not to say that the state lacks intention. On the contrary, the fact is that State lacks appropriate infrastructure and determination. In these

circumstances, keeping matters relating to one''s safety and security of life and liberty unattended or pending, is per se dangerous, imperilling one''s

life for no fault of his own.

12. Barring a case whether there exists justification for non-disposal of application; such prolong inaction running in several years can neither be

appreciated nor be condoned.

13. Now coming to second aspect regarding over business etc. on the part of the District Magistrate, it is true that District Magistrate is very

important authority in the district. He is over all Head of public administration in the District. He is responsible for maintaining law and order in the

district being In-charge of criminal administration of justice in the district. It is also true that there are more than 50 statutes, which have different

provisions conferring sensitivity and onerous responsibility upon the District Magistrates. Many of those powers are sheer administrative, but many

a times they are quasi judicial also. I am not enlisting all such statutes. He also represents State Government for execution of its policy and,

therefore, has to attend common people every day dealing with their grievances and taking action for redressal thereof.

14. It is a matter of common knowledge, that District Magistrate is extremely busy person while holding such office. His power administrative or

quasi Judicial, to some extent have been de-centralised by the Government by appointing number of Additional District Magistrates in the districts

besides delegating some powers to further subordinate administrative officers like Sub Divisional Magistrate etc. Still there cannot be any dispute

that lot of functions have to be discharged by the District Magistrate himself, but this cannot by itself be a justification for keeping a matter like the

present one pending for years together. In fact, I do not find any voice of discern on the part of the respondent represented through learned

Standing Counsel that a statutory power, administration or quasi judicial must be discharged within a reasonable time.

15. In the matter of decision on applications for fire-arm licences, the Government of India has provided a period of three months ordinarily unless

delay is supported by some valid reasons. To same effect Government Orders have been issued by State Government also stressing upon District

Magistrates to take decision upon firearm licence application ordinarily within three months. The term ""ordinarily"" does not mean that the decision

has to be taken within three months sharp since it conceives period beyond three months also but then such prolonged period must be an exception

and not a rule. It cannot be said that this prescription of three months is of no consequence and District Magistrate is free to pass order on the fire-

arm licence application as and when he likes.

16. The petitioner has shown his helplessness in a situation like this by stating in para 6 of the writ petition that he was running from pillar to post for

rightful claim, but of no consequence.

17. Many a times the individual comes and meet the person concerned for getting their application moved. It is said that in the present state of

affair nothing moves unless the palm of the responsible person is greased or some interest is created. In other words, in most of such matters

inaction is preceded by corrupt intention. Making observation on various facet of corruption, this Court in Mithilesh Kumari v. State of U.P. and

others, 2010 (10) ADJ 426 (DB) said in paras 52 to 55 of the judgment as under:

52. In general the well accepted meaning of corruption is the act of corrupting or of impairing integrity, virtue, or moral principle; the state of being

corrupted or debased; lost of purity or integrity; depravity; wickedness; impurity; bribery. It further says, ""the act of changing or of being changed,

for the worse; departure from what is pure, simple, or correct; use of a position of trust for dishonest gain.

53. Though in a civilised society, corruption has always been viewed with particular distaste to be condemned and criticised by everybody but still

one loves to engage himself in it if finds opportunity, ordinarily, since it is difficult to resist temptation. It is often, a kind, parallel to the word

"bribery", meaning whereof in the context of the politicians or bureaucrats, induced to become corrupt. The Greek Philosopher Plato, in 4th

Century BC said, ""in the Republic that only politicians who gain no personal advantage from the policies they pursued would be fit to govern. This

is recognised also in the aphorism that those who want to hold power are most likely those least fit to do so."" While giving speech before the

House of Lords William Pitt in the later half of 18th Century said, ""Unlimited power is apt to corrupt the minds of those who possess it."" Lord

Acton in his letter addressed to Bishop Creighton is now one of the famous quotation, ""Power tends to corrupt and absolute power corrupts

absolutely.

54. Corruption is a term known to all of us. Precise meaning is illegal, immoral or unauthorized act done in due course of employment but literally it

means ""inducement (as of a public official) by improper means (as bribery) to violate duty (as by committing a felony)."" It is an specially pernicious

form of discrimination. Apparently its purpose is to seek favourable, privileged treatment from those who are in authority. No one would indulge in

corruption at all if those who are in authority, discharge their service by treating all equally.

55. We can look into it from another angle. Corruption also violates human rights. It discriminates against the poor by denying them access to

public services and preventing from exercising their political rights on account of their incapability of indulging in corruption, of course on account of

poverty and other similar related factors. Corruption is, therefore, divisive and makes a significant contribution to social inequality and conflict. It

undermines respect for authority and increases cynicism. It discourages participation of individuals in civilised society and elevates self interest as a

guide to conduct. In social terms we can say that corruption develops a range bound field of behaviour, attitude and beliefs. Corruption is antithesis

of good governance and democratic politics. It is said, that when corruption is pervasive, it permeates every aspect of people''s lives. It can affect

the air they breathe, the water they drink and the food they eat. If we go further, we can give some terminology also to different shades of

corruption like, financial corruption, cultural corruption, moral corruption, idealogical corruption etc. The fact remains that from whatever angle we

look into it, the ultimate result borne out is that, and the real impact of corruption is, the poor suffers most, the poverty groves darker, and rich

become richer.

18. Learned standing counsel at this stage pointed out that the officer presently holding the charge of District Magistrate has come very recently.

He cannot be held guilty of causing delay of seven years. This submission has some force. Responsibility cannot lay solely on the officer, who is at

present holding the office, but for inaction in the matter for the last seven years all those, who held the office during this period, are responsible and

guilty showing a conduct, which amounts to dereliction of duty and lack of devotion. Both constitute ""misconduct"" under the Conduct Rules

applicable to the members of All India Services namely, Indian Administrative Services, to which these officers belong and appropriate disciplinary

action by competent authority against all such persons is, therefore, need of the time.

19. In the circumstances, I direct Chief Secretary U.P., Lucknow to find out the concerned officers, who held office of District Magistrate,

Allahabad from June 2004 onward and to find out why they kept this matter pending and did not take any decision within reasonable time. In all

such matters where no appropriate reason or explanation is offered, he would take such action as permissible in law following the due procedure

prescribed, which may give a message to all for not showing such lax conduct or inaction in future. So far as pending application of petitioner is

concerned, respondent No. 2 is directed to take appropriate decision in the matter within a period of one month from the date of production of

certified copy of this order.

20. Petitioner is entitled to cost, which I quantify to Rs. 10,000/-. Respondent No. 1 is, however, at liberty to recover such amount, after paying

the same to the petitioner, from such officers, who are found responsible.

21. The writ petition is disposed of with the above directions.