

(2011) 07 PAT CK 0266
Patna High Court
Case No: CWJC No. 16915 of 2008

Sanjit Ranjan

APPELLANT

Vs

The State of Bihar and
Others

RESPONDENT

Date of Decision: July 26, 2011

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Dinesh Kumar Singh, J.

Heard learned counsel for the petitioner and the State. The present writ application has been filed for quashing the order dated 27.6.2006 passed by respondent No. 3, as contained in Annexure-1, whereby, the petitioner's application for grant of license of revolver/pistol was rejected. The quashing of the order dated 3.6.2008 passed by respondent No. 2 (Commissioner, Patna Division, Patna) in Arms Appeal No. 430 of 2007 was also prayed for whereby the learned appellate authority upheld the order of learned Collector.

2. The writ application was filed on 21.11.2008 and vide order dated 5.2.2009, the standing Counsel No. XV was granted four weeks time to file counter affidavit but till date no counter affidavit has been filed, hence, this Court has no option but to dispose off the writ application on the pleadings of the petitioner.

3. The petitioner, being the wholesale food grain dealer, applied for license for pistol in the year 2006 when the learned District Magistrate, Patna, without assigning any reason, rejected the claim of the petitioner which was challenged in Appeal No. 153 of 2006 before the learned Divisional Commissioner, Patna Division, Patna, when the learned Divisional Commissioner, Patna remanded back the matter to the learned District Magistrate, Patna with a direction to dispose off the matter with a reasoned order. Consequently, the District Magistrate, on 27.6.2007, passed the order again, rejecting the claim of the petitioner on the ground that the petitioner has an arms

license from before, hence, he has no pressing necessity. The said order was challenged by the petitioner in an appeal vide Arms Appeal No. 430 of 2007. The same was dismissed on 3.6.2008, as contained in Annexure-2, by the Divisional Commissioner, Patna, whereby the order of District Magistrate was upheld on the ground that the District Magistrate after giving due opportunity has passed a reasoned order.

4. Learned counsel for the petitioner submits that Section 13 of the Arms Act (hereinafter referred to as "the Act") deals with grant of license which envisages that it has to be granted on the basis of the report being called for from the Officer-in-Charge of the nearest police station. The order of the Collector reflects that the police report does not reflect any adverse remarks about the petitioner which has been recorded in the order dated 27.6.2007 which reads as follows:--

The police verification report does not mention any adverse remarks about him.

5. It is further submitted by the learned counsel for the petitioner that possession of one arms from before cannot be a ground of refusal of license for pistol/revolver. It is admitted by the learned counsel for the petitioner that he has a D.B.B.L. gun from before and he needs small arms for protection since dacoity was committed in his house and some inmates were also kidnapped.

6. Considering the submission of the petitioner, this Court is of the view that Section 14 of the Act, which deals with the grounds for refusal of the license, reads as follows:--

14. Refusal of licenses. Notwithstanding anything in Section 13, the licensing authority shall refuse to grant--

(a) a licence u/s 3, Section 4 or Section 5 where such licence is required in respect of any prohibited arms or prohibited ammunition;

(b) a licence in any other case under Chapter-II,--

(i) where such licence is required by a person whom the licensing authority has reason to believe--

(1) to be prohibited by this Act or by any other law for the time being in force from acquiring, having in his possession or carrying any arms or ammunition; or

(2) to be of unsound mind; or

(3) to be for any reason unfit for a licence under this Act; or

(ii) where the licensing authority deems it necessary for the security of the public peace or for public safety to refuse to grant such licence.

7. From perusal of Section 14 of the Act, it appears that the grounds on which the District Magistrate refused to issue licence do not get enumerated in Section 14 of

the Act The licensing authority can refuse the license only within the parameters as enumerated in Section 14 of the Act.

8. Section 3 of the Act deals with acquisition, carrying and possession of firearms and ammunitions.

9. Sub-section (2) of Section 3 reads as follows:--

Notwithstanding anything contained in sub-section (1), no person, other than a person referred to in sub-section (3), shall acquire, have in his possession or carry, at any time, more than three firearms:

Provided that a person who has in his possession more firearms than three at the commencement of the Arms (Amendment) Act, 1983, may retain with him any three of such firearms and shall deposit, within ninety days from such commencement, the remaining firearms with the officer-in-charge of the nearest police station or, subject to the conditions prescribed for the purposes of sub-section (1) of Section 21, with a licensed dealer or, where such person is member of the armed forces of the Union, in a unit armoury referred to in that sub-section.

10. Hence, the aforesaid provisions stipulates that a person can acquire three arms licences, hence, on this score also the impugned orders, as contained in Annexures-1 and 2, clearly reflect that they have been passed without considering the provisions of the Act and which is a glaring example of non-application of mind. Consequently, both the impugned orders; as contained in Annexures-1 and 2 are hereby quashed.

11. Let the District Magistrate, Patna, reconsider the claim for issuance of arms license of the petitioner after giving due opportunity within a period of two months of production/receipt of the order. The writ application is allowed to the extent as indicated above.