

## Imperial Arms Co. Gun Manufacturer and Another Vs The State of Bihar and Others

**Court:** Patna High Court

**Date of Decision:** May 5, 2003

**Citation:** (2003) 3 PLJR 611

**Hon'ble Judges:** R.S. Garg, J

**Bench:** Single Bench

**Advocate:** Uday Bhanu Roy and Ambrish Kr. Jha, for the Appellant; S.A. Hussain, for the Respondent

**Final Decision:** Allowed

### Judgement

@JUDGMENTTAG-ORDER

R.S. Garg, J.

Heard learned Counsel for the parties.

2. The present appears to be a case of high-handed harassment by the State authorities. The Petitioner who already possesses a licence under

Form IX made an application on 4.2.1982 under Annexures-2 and A/2 inter alia submitting that licence under Form-XI for repairing purposes be

also issued in favour of the joint proprietors of M/s Imperial Arms. Co. Gun Manufacturer. The identity of the applicant was shown as M/s

Imperial, Arms Co. Gun -Manufacturer, Gun Factory, Munger and the permanent address was shown to be C/o Shri Nand Lal Sharma, Mohalia-

Mirjapur, P.S.-Kotwali, Munger. Along with this licence application an application signed by Rajan Sharma was also filed inter alia submitting that

the licence in Form-XI be issued in favour of M/s Imperial Arms Co. Gun Manufacturer mentioning the names of the five persons, who are joint

owners of the firm. Despite specific prayer the licence in Form-XI (Annexure-3) was issued without mentioning the names of the joint owners. It

appears that on 28.2.1986 some memo was issued from the office of the District Magistrate to the Petitioner. The Petitioner thereafter submitted a

copy of his licence in Form-XI to show that whatever was left in licence in Form XI be corrected and the corrected copy be supplied to him. On

5th April, 1986 the District Magistrate made recommendation to the Joint Secretary (Home), Government of Bihar saying that M/s Imperial Arms

Co. has a licence in Form IX, which was issued in favour of five persons namely, Nand Lal Sharma, Rajan Sharma, Bhushan Kumar Sharma,

Shekhar Kumar Sharma and Gautam Kumar Sharma, therefore, the licence in Form, XI be corrected by entering these five names. Thereafter the

licensee i.e. the Petitioner firm continued to reap the benefits under Form IX and Form XI. It appears that somewhere in the year 1986 or

thereafter Nand Lal Sharma died, however, the licence being in the name of the firm continued and was renewed from time to time. The State

authorities thereafter required the Petitioner to make an application for substitution of the names of the deceased owner in Form XI. It can simply

be noted that till by that time the licence issued under Form XI was not corrected and no orders were passed. The holder of the licence was a firm.

The licence as it stands does not give the names of the owners but simply shows that the firm was having its permanent residence/occupation at a

place which was shown to be C/o Nand Lal Sharma. If Nand Lal Sharma has died then substitution of the legal representative of the person

through whom or under whom the address was shown was not required under the law. The substitution of the legal representative is required in a

case where the legal representative of the proprietor or owner of a firm or holder of a licence seek benefit under the said licence. Undisputedly, the

licence was issued in the name of the firm. If that was so the substitution of the legal representation of the addressee could not be ordered; firstly,

because the firm is a juristic person can sue and be sued in its name and would not die a natural death except when it is brought under liquidation

or the partnership is dissolved. If the person C/o whom address of the firm is shown dies then that death would not make any difference in the

matter because death of the addressee would not be the death of the licence holder.

3. The submissions of the learned Counsel for the State Government that they do not know anything about the legal representative of deceased

Nand Lal Sharma and about joint owners of M/s Imperial Arms Co. appears to be a cock and bull story. If in the year 1982 along with the original

application the details of the partners/joint owners were already given and in the year 1986 the District Magistrate himself recommended the

matter to the Home Department then the State authorities or the District Magistrate can not be allowed to say in the year 2002 that they do not

know anything about the partners joint owners of the firm. In fact the authorities are playing the game of hide and seek and are trying to cover their

lapses which they could not repair in last 20 years.

4. Nothing has been brought on record from the side of the State that if the licence application was annexed with another application why

then, the licence was n(sic) issued in name of those five persons. The State even does not say that why (sic) recommendations made by the District

Magistrate in the year 1986 were not ta(sic) into consideration and the names of (sic) those persons were not recorded in (sic) original licence.

5. I fail to understand that under what authority of law an action impugned in this writ application could be taken against the Petitioners by the State

Government. The direction issued by the State Government/ District Magistrate are quashed. The authorities are hereby directed to restore the

licence and return seized articles to the Petitioner within 15 days from today. Within six weeks from today the State authorities shall be obliged to

pass orders on application dated 4.2.1982 and the recommendations made by the District Magistrate contained in Annexure-5. They would also

be obliged to issue notice to the Petitioner, afford him personal hearing and pass reasoned order. The petition is allowed.