

Rajdhani Arms Through Its Partner Mohd. Abu Bashar Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Jan-04-2007

Judge : S.N. Hussain, J.

Acts : Arms Rules, 1962; Indian Penal Code; Arms Act

Appeal No. : CWJC No. 5435 of 2004

Appellant : Rajdhani Arms Through Its Partner Mohd. Abu Bashar

Respondent : The State of Bihar and ors.

Advocate for Def. : Chhote Lal Nr. Singh, SC I

Advocate for Pet/Ap. : Firoz Shamim, Adv.

Disposition : Petition allowed

Prior history : S.N. Hussain, J. 1. Heard learned Counsel for the petitioner and learned Counsel for the State. 2. This writ petition has been filed for quashing order dated 23/25.03.2004 (annexure-14) vide memo No. 3270 and also for quashing notice dated 23.03.2004 (Annexure-15) vide memo No. 3120, both issued under the signature of the Deputy Secretary, Department of Home (Police), Govt. of Bihar (respondent No. 3). By the impugned order, the authority concerned rejected the application of the petitioner fi

Judgement :

S.N. Hussain, J.

1. Heard learned Counsel for the petitioner and learned Counsel for the State.
2. This writ petition has been filed for quashing order dated 23/25.03.2004 (annexure-14) vide memo No. 3270 and also for quashing notice dated 23.03.2004 (Annexure-15) vide memo No. 3120, both issued under the signature of the Deputy Secretary, Department of Home (Police), Govt. of Bihar (respondent No. 3). By the impugned order, the authority concerned rejected the application of the petitioner firm for increasing the numbers of arms and ammunitions allowed to be kept by the petitioner firm in the licence already granted by the authorities, whereas, by the impugned notice, a show cause was called for from the petitioner as to why his licence for keeping and selling arms and ammunitions be not cancelled.
3. Learned Counsel for the petitioner submitted that as far back as in the year 1998, the petitioner applied for grant of arms trade licences in Form Nos. XI, XII, XIII and XIV of the Arms Rules, 1962 (hereinafter referred to as the 'Rules' for the sake of brevity) before the authority concerned who subsequently allowed the said application on 12.4.2002 (Annexures 5 and 6) and granted licence under Form Nos. XI and XII of the Rules, but that was done only after the direction of this Court vide order dated 18.02.2002 (annexure-3) passed in CWJC No. 14875 of 2001. The said permissions were with respect to 50 N.P. Bore Rifles, 50 Revolvers/ Pistols and 50 Guns under Form XI, whereas it was for 30 Rifles, 10 Revolvers, 10 Pistols, 5,000 ammunitions for Rifle, 1,000 ammunitions for Revolver and 1000 ammunitions for Pistol under Form XII.
4. Learned Counsel for the petitioner further submitted that the numbers of the arms and ammunitions allowed in the licence granted to the petitioner was much below his requirement and was also below the recommendation of the District Magistrate, Motihari who was asked by the Deputy Secretary of the Department of Home (Police), Govt. of Bihar, vide letter No. 1842 dated 03.03.2001 (annexure-7) to inquire into the matter and submit his report, whereupon the District Magistrate

submitted his report on 02.08.2001 (annexure-8) recommending licence for 100 Rifles, 50 Revolvers/Pistols and 200 Guns under Form XI and 100 Rifles, 50 Revolvers/ Pistols, 40,000 ammunitions for Rifles and 20,000 ammunitions for Revolvers/ Pistols, under Form XII, whereafter the Deputy Secretary, Department of Home (Police), Govt. of Bihar, informed the District Magistrate, East Champaran, about the aforesaid decision vide memo No. 4405 dated 13.04.2002 (annexure-9).

5. Learned Counsel for the petitioner also averred that in the said circumstances, he filed an application before the authority concerned on 71.10.2002 (annexure-10) to increase the numbers of arms and ammunitions in the licence as per the aforesaid, recommendation of the District Magistrate elated 02.08.2001 (annexure-8), although the petitioner had filed his application for licence in the year 1998 and has also filed an application on 09.03.2001 (annexure-11) for much more number of arms and ammunitions as required by the petitioner firm.

6. Learned Counsel for the petitioner also stated that when no heed was paid to the petitioner's application dated 21.10.2002 (annexure-10), he had to again move before this Court vide CWJC No. 951 of 2003 which was disposed of by this Court on 04.08.2003 (annexure-12) asking the petitioner to file a fresh petition before the Home Commissioner, Govt. of Bihar, Patna, (respondent No. 2) within a period of four weeks from the date of the said order and if that is done, the said respondent No. 2 was directed to consider the grievance of the petitioner and dispose of his application by a reasoned order in accordance with law within a period of four months from the date of filing of such petition. In view of the said order of this Court, the petitioner filed a detailed application before respondent No. 2 on 01.09.2003 (annexure-13) along with a copy of the said order of this Court.

7. Learned Counsel for the petitioner further submitted that the said matter was disposed of after six months by the impugned order dated 23rd/25th March, 2004 (annexure-14) vide memo No. 3270 issued under the signature of the Deputy Secretary, Department of Home (Police) Govt. of Bihar, by which petitioner's application for increase of the number of arms and ammunitions in the petitioner's licence was rejected on three grounds, namely (i) that the petitioner has not yet

started business in his shop in question; (ii) that partner of the petitioner's firm was accused in criminal cases and (iii) that the numbers of arms and ammunitions granted in petitioner's licence was in accordance with the Department letter No. 9393 (wrongly mentioned as 1993) dated 11.09.1986 and shall remain according to the said department letter.

8. Learned Counsel for the petitioner has challenged the aforesaid impugned order of the authority concerned on the grounds that none of the three grounds mentioned above taken by the authority concerned for rejecting his petition were legal, correct and justified in as much as the petitioner had started his business immediately after No Objection Certificates' were received by it from the authority concerned and hence there was no question of delay or laches on the part of the petitioner. With respect to second ground that partner of the petitioner firm was accused in criminal cases, he submitted that he was earlier accused in one criminal case in which he was granted clean acquittal by the court of law much earlier, whereafter he was not accused in any other criminal case. With respect to the third ground he submitted that department letter dated 11.9.1986 referred only to the minimum number of arms and ammunitions to be granted in licence to any firm dealing with it and not the maximum number. Hence, there was no occasion for the authority concerned to stick to the minimum numbers, whereas the circumstances clearly indicated that numbers of arms and ammunition allotted in the petitioner's licence required increase.

9. The petitioner has also challenged the notice dated 23.03.2004 (annexure-15) issued under the signature of Deputy Secretary, Department of Home (Police), Govt. of Bihar, by which the petitioner has been asked to submit his show cause as to why his licence granted on 13.04.2002 should not be cancelled as the partner of the petitioner was a named accused in a criminal case of 1982 under the provision of the Penal Code as well as the Arms Act.

10. In the aforesaid matter, learned Counsel for the petitioner has submitted that the aforementioned notice was issued merely in retaliation to the petitioner's filing of writ petitions twice earlier, upon which specific orders were passed by this Court. He also averred that the authorities concerned were well aware of the fact

that owner of the petitioner firm has been given clean acquittal by the court of law, whereafter an inquiry was held by the Criminal. Investigation Department and a report was submitted before the authority concerned by the Superintendent of Police, Criminal Investigation Department, finding that there was no allegation against the petitioner. Hence, the said notice was absolutely illegal, perverse and malafide.

11. On the other hand, learned Counsel for the respondents vehemently opposed the contentions of the learned Counsel for the petitioner and submitted that the notification of the Govt. of Bihar issued on 1st January, 1964 (annexure-2) by the order of Governor of Bihar under the signature of Secretary of Political (Police) Department, Government of Bihar was with respect to Forms XIII and XIV of the Rules and hence it cannot be made applicable to this case which is limited only to Form XI and XII of the Rules. He further submitted that letter No. 196 dated 02.08.2001 (annexure-8) sent by the District Magistrate, Motihari, East Champaran to the Deputy Secretary, Department of Home (Police), Bihar, Patna, (respondent No. 03) cannot be termed as recommendation as nothing was recommended by it and merely numbers of arms and ammunitions required by the petitioner in his application were enumerated. He also averred that in any view of the matter, the State Government has the prerogative to decide the number of arms and ammunitions to be given in a licence with or without any recommendation of any of the authority concerned. Hence, he submitted that the Government has exercised its prerogative in accordance with law which cannot be challenged as no illegality has been committed.

12. After hearing learned Counsel for the petitioner as well as learned Counsel for the respondents and also after considering the materials on record, it is quite apparent that there are three main issues to be decided in this case. Firstly as to whether the petitioner had rightly not started his business in the shop in question till the date of the impugned order; secondly, as to whether partner of the petitioner firm, namely Abu Bashar @ Chaitu Lal, was accused in criminal cases and; thirdly as to whether the number of arms and ammunitions granted in petitioner's licence was in accordance with the Department letter dated 11.9.1986, which cannot be legally increased.

13. With respect to the first point that the petitioner had not started his business, no basis or material has been mentioned by the authority concerned in the impugned order dated 23/25.03.2004 (annexure-14), nor any material in that regard has been produced in the counter affidavit filed by the respondent and nor even learned Counsel for the respondents could place any reliable pleadings or material to support the said assumption. On the other hand, learned Counsel for the petitioner submitted that the aforesaid assumption was completely baseless as the petitioner's arm shop had started functioning immediately after the grant of 'No Objection Certificates' by the District Arms Magistrate, East Champaran on 22.08.2003, 22.9.2003 and 22.01.2004 for different articles respectively as detailed in paragraph 56 of the writ petition which has not been denied by the respondents in their counter affidavit. Hence, in the aforesaid circumstances, the petitioner could not have started the business before obtaining 'No objection' from the authority concerned and as such the said ground taken by the authority concerned in its impugned order is absolutely frivolous, misconceived and baseless. The statements made in writ petition in that regard are also fully supported by the subsequent report of the District Arms Magistrate dated 18.06.2005 (annexure-19) in which it had been specifically mentioned that there was no grievance against the petitioner.

14. With respect to the second point that partner of the petitioner-firm was accused in various criminal cases, the impugned order refers to memo No. 432 dated 14.01.2003 issued by the Superintendent of Police, Special Branch, Bihar, Patna, but neither number of case, nor the date of occurrence has been mentioned and from the record, it transpires that only one criminal case was before the authority concerned, namely Sessions Trial No. 489 of 1986 arising out of Khagaul P.S. Case No. 221 of 1982 in which the said partner of the petitioner firm along with two others was named as accused, whereas no other case had been mentioned by any of the authority concerned. In this regard, it is the specific claim of the petitioner that its aforementioned partner was accused in only one case which is mentioned above and in which he was acquitted by order dated 23.05.1988 (annexure-16) passed by the learned 8th Addl. Sessions Judge, Patna holding the petitioner to be not guilty. Hence, after his aforesaid clean acquittal in the year 1988, the authority concerned was not justified in assuming in the year 2004 that

criminal cases were pending against the said owner of the petitioner-firm, although he was not involved in any other criminal case. This fact has been specifically mentioned in paragraphs 46 to 52 of the writ petition which has not been denied by the respondents in their counter affidavit, nor even learned Counsel for the respondents could place any reliable pleadings or material to support the said assumption. Hence, in the aforesaid circumstances, the said ground taken by the authority concerned in its impugned order is also absolutely frivolous, misconceived and baseless. The statement made by the writ petitioner is also fully supported by the report of the Superintendent of Police, Criminal Investigation Department, Bihar, Patna dated 02.12.2000 (annexure-17), in which it has been specifically found that there was no such allegation against the petitioner.

15(a). With respect to the 3rd point taken in the impugned order that the numbers of arms and ammunitions granted in petitioner's licence was in accordance with the Government letter No. 9393 dated 11.09.1986, the respondents have annexed the said Government letter as Annexure-A to their counter affidavit which clearly shows that only the minimum number of arms and ammunitions to be granted in such case was mentioned and there was no maximum number provided therein. Hence, there is no bar, either according to the said. Government letter, or according to any law or rule for the authorities to increase the number of arms and ammunitions in the licence as per the genuine requirements of the licensee. No other material, Government letter, Notification, Circular or Rule has been referred in the counter affidavit filed by the respondents or in the arguments raised by their learned Counsel. Hence, in the aforesaid circumstances, the respondents authority had the full power and jurisdiction to increase the number of arms and ammunitions in the licence according to requirements of the petitioner, if they were legal, proper and genuine.

15(b). In the instant matter, a letter dated 02.08.2001 (annexure-8) has been sent by the District Magistrate, Motihari, East Champaran to the Deputy Secretary, Department, of Home (Police), Bihar, Patna, stating in detail about the requirements of the petitioner firm. Learned Counsel for the respondents submitted that the said letter cannot be termed as a recommendation as the requirements of the petitioner has only been enumerated therein. The said

argument of learned Counsel for the respondents cannot be validly relied upon, as if the District Magistrate, who is the recommending authority, mentions the requirement of the petitioner firm without raising any objection thereto and sending the same to the authority before whom the application for enhancement of the number of arms and ammunitions in the licence was pending, the same cannot be termed anything else, but a recommendation. Hence, in that view of the matter, the said letter sent by the District Magistrate was clearly a recommendation.

15(c). No doubt, the State Government has the prerogative to decide the number of arms and ammunitions to be given in a licence with or without any recommendation of the authorities concerned, but the said prerogative has to be exercised in accordance with rule of equity and justice on the basis of materials available on record. Here, in the instant case, neither any rule of equity or justice was against, the petitioner's claim, nor there was any material to show any bar, illegality or irregularity in the claim of the petitioner, whereas on the other hand, there was specific recommendation of the recommending authority, namely the District Magistrate, for increase in the numbers of arms and ammunitions in the petitioner's licence. Hence, no legal or factual defect or error having been found in the said claim and recommendation, there was no occasion for the authority concerned to exercise its prerogative against the petitioner.

16. Hence, in the aforesaid circumstances, it is quite apparent that the impugned order dated 23/25.03.2004 (annexure-14) has been passed by the authority concerned mainly on the assumption that the petitioner had not started business in his shop in question and that the partner of the petitioner firm was an accused in criminal cases. Both the aforesaid grounds having fallen, there remains no leg for the third point also to stand.

17. So far the impugned notice dated 23.03.2004 (annexure-15) issued under the signature of Deputy Secretary, Department of Home (Police) Govt. of Bihar, is concerned, it is quite apparent that the partner of the petitioner firm was earlier accused in a criminal case of 1982 in which he was given clean acquittal by the trial court on 23.05.1988 (annexure-16), whereafter in the year 2000, an inquiry was held by the Criminal Investigation Department at the instance of the Deputy

Secretary, Department of Home (Police), Govt. of Bihar on the application of the petitioner for grant of licence, whereafter the Superintendent of Police of the said Department specifically found that there was no allegation against the petitioner vide his report dated 02.12.2000 (annexure-17). This matter has also been discussed in paragraph 14 above which clearly shows that the assumption of the authority issuing the impugned notice was absolutely baseless, frivolous and misconceived.

18. In view of the aforesaid findings based on the materials on record and averments of the parties, the impugned order dated 23/25.03.2004 (annexure-14) vide memo No. 3270 issued under the signature of Deputy Secretary (respondent No. 3) as well as the impugned notice dated 23.03.2004 (annexure-15) vide memo No. 3120 issued under the signature of the said Deputy Secretary (respondent No. 3) are hereby quashed and the said respondent No. 3 is directed to pass fresh orders on the applications of the petitioner for enhancing the number of arms and ammunitions in the licence already granted by the authorities for keeping and selling arms and ammunitions in accordance with the recommendation of the District Magistrate, Motihari, East Champaran, sent to respondent No. 3 vide letter No. 196 dated 02.08.2001 (annexure-8), as well as in accordance with the observations made hereinabove within two months from the date of production/receipt of this order.

19. This writ petition is, thus, allowed, hut there will be no order as to costs.

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