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Court : Patna

Decided On : Sep-01-2000

Judge : Radha Mohan Prasad, J.

Appeal No. : C.W.J.C. No. 8425 of 2000

Appellant : Arun Kumar @ Arun Kumar Barnwal

Respondent : State of Bihar and ors.

Disposition : Petition Allowed

Judgement :

Radha Mohan Prasad, J.

1. In this writ petition, the petitioner has assailed the validity of the order dated 20th May, 2000 passed by the District Magistrate, West Champaran, Bettiah, contained in Annexure 13, whereby and whereunder the application filled by him (petitioner) for grant of licence for N.P. Bore revolver has been disallowed. The only reason for disallowing the licence for the said firearms is that the petitioner already possesses two fire-arms since before, which, according to the District Magistrate, is sufficient for self-protection.

2. In short, the relevant facts are that the petitioner claims to be a farmer owning large farms and orchards falling in the district of West Champaran. With the growth

of criminalization of the district, the petitioner started having troubles in shape of increasing intensity of threats from the dacoits in general and from the notorious Bhagad Yadav gang in particular, on account of which the petitioner shifted his residence from village to Bettiah town and also sought police protection while visiting his fields and orchards which was provided to him. It is stated that the petitioner, thus, got licence for rifle and gun to meet the exigencies. In the year 1996, the petitioner was denied of police protection by the officer-in-charge for which he had approached the Superintendent of Police, Bettiah and thereafter the Deputy Inspector-General, Champaran Range, who directed the officer-in-charge concerned to give him protection. However, in the meanwhile, the petitioner's lichi crop was looted by the criminals. It is, thus, submitted that the petitioner is under threat from the criminals and applied for licence of the revolver also which has been recommended, vide Annexures 3 to 5.

3. Earned Counsel for the petitioner has submitted that the reason for refusal of the licence to the petitioner is wholly untenable in view of the provisions, contained in Sub-section (2) of Section 3 of the Arms Act, 1959 (hereinafter referred to as 'the Act'), which only provides that no person like the petitioner can have in his possession or carry, at any time, more than three fire-arms. It is submitted that Section 14 of the Act deals with the ground for refusal of licences and it appears¹ that the Collector (respondent No. 3) is purported to have acted in exercise of the power under Section 14(b)(i)(3) of the the said Act though the said provision is not at all applicable in the facts and circumstance of the present case.

4. Earned Counsel for the State has failed to justify the aforementioned reasons assigned by the Collector for refusing licence to the petitioner. He, however, submitted that the provision contained in Section 14(b)(i)(3) of the Act gives very wide power to the Collector to refuse licence for any reason on account of which he finds the appellant to be unfit for grant of licence.

5. This Court is unable to accept the said submission of the earned Counsel for the State. Chapter II of the Act deals with acquisition, possession, manufacture, sale, import, export and transport of Arms and Ammunition. Sections 3, 4 and 5, which are in Chapter II of the Act, deal with the grant of licence for different

purposes. Section 3 deals with the licence for acquisition and possession of fire-arms and ammunition; Section 4 deals with licence for acquisition and possession of arms of specified description in certain cases and Section 5 deals with licence for manufacture, sale, etc. of arms and ammunition. Section 13 of Chapter III deals with the grant of licences and Section 14 deals with refusal of licences. For the sake of convenience, Section 14 of the Act is quoted hereunder for ready reference:

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

(a) a licence under Section 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.

(2) The licensing authority shall not refuse to grant any licence to any person merely on the ground that such person does not own or possess sufficient property.

(3) Where the licensing authority refuse to grant a licence to any person, it shall record in writing the reason for such refusal and furnish to that person on demand a brief statement of the same unless in any case the licensing authority is of the opinion that it will not be in the public interest to furnish such statement.

6. Under Section 14(b)(1)(3), a licence under Chapter III other than under Section 3, 4 or 5 where such licence is required in respect of any prohibited arms or prohibited ammunition required by a person can be refused notwithstanding anything contained in Section 13 or for any reason unfit for a licence under the Act.

7. Thus, it is evident from bare reading of the said provision that the expression 'for any reason' relates to grant of licence being unfit under the Act, otherwise such a provision will amount to conferring unbridled power on the licensing authority, which is not permissible. Sub-section (2) of Section 3 only provides that no person other than a person to in Sub-section (3) shall acquire, have in his possession or carry, at anytime, more than three fire-arms and if such expression for 'any reason' unfit for a licence under the Act is to include power in the licensing authority to refuse the grant of licence within the said permissible limit, then it will be unreasonable and ultra vires Sub-section (2) of Section 3 itself of the Act inasmuch as under Sub-section (2) of Section 3, the bar is for possessing more than three fire-arms and not three fire-arms other than a person referred to under Sub-section (3) which deals with more than one licence to any dealer or to any member of rifle club or rifle association licensed or recognized by the Central Government using a point 22 bore rifle or an air rifle for target practice. Thus, in my opinion, refusal to grant licence on the ground that the applicant possesses two fire-arms is not conered by the discretion given to the licensing authority for refusal of licence under the aforementioned provision.

8. Earned Counsel for the State has failed to show any provision under which the licensing authority has been given any discretion to consider as regards sufficiency of the fire-arms available with a person for his protection. In fact, Sub-section (2) of Section 14 provides that the licensing authority shall not refuse to grant any licence to any person merely on the ground that such person does not own or possess sufficient property. It is evident that the Act does not contemplate that the licensing authority should go into the sufficiency of the fire-arms available with a person for his protection. It is only where there is any reason which makes an applicant unfit for licence under the Act or where the licensing authority deems it necessary for the security of the public peace or for public safety to refuse to

grant such licence, that licence can be refused under Section 14(b)(i)(3) of the Act.

9. Thus, this Courts finds that the reasons assigned by the Collector for refusal of licence to the petitioner, vide impugned order, are not sustainable and the impugned order (Annexure 13) is, thus, quashed. The Collector (respondent No. 3) is directed to reconsider the matter and proceed with grant of licence accordingly, preferably within a period of two months from the date of receipt/production of a copy of this order.

10. The writ application is, thus, allowed, but without costs. Petition allowed.

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