

Arvind Kumar Rai Vs. State of Uttar Pradesh and ors.

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Court : Allahabad

Decided On : Jul-24-2009

Reported in : 2009(4)AWC4075

Judge : Devi Prasad Singh, J.

Appellant : Arvind Kumar Rai

Respondent : State of Uttar Pradesh and ors.

Disposition : Petition allowed

Judgement :

Devi Prasad Singh, J.

1. Heard learned Counsel for the petitioner and learned standing counsel and perused the record.
2. With the consent of the parties' counsel, the writ petition is finally disposed of at admission stage.
3. The petitioner Arvind Kumar Rai has applied for grant of fire arm licence to the District Magistrate, Ghazipur. The application has been rejected, hence the present writ petition.

4. In brief, the petitioner has applied for grant of fire arm licence (revolver) alongwith a certificate given by the Pradhan of his village with regard to grant of licence. The application was kept pending by the respondents without taking a decision. Hence, the petitioner had approached this Court under Article 226 of the Constitution of India by preferring Writ Petition No. 2001 of 2006 which was decided finally vide judgment and order dated 11.5.2006. A mandamus was issued to the District Magistrate, Ghazipur to decide the petitioner's application for grant of fire arm licence within one week.

5. In pursuance to the judgment of this Court, the District Magistrate, Ghazipur had considered the petitioner's application and rejected the application by impugned order dated 29.4.2006. A perusal of the impugned order indicates that a report was submitted by the Superintendent of Police and revenue authorities indicating therein the criminal cases which were pending against the petitioner's uncles and father. The report indicates that the family members of the petitioner were involved in serious offences. It appears that the District Magistrate without recording a finding at his end made an endorsement on the said report on 29.4.2006 with the word, 'Aswikrit' (refused).

6. The submission of the petitioner's counsel is two-fold; firstly pendency of criminal cases against the petitioner's father or other family members should not be considered as a hurdle in grant of arm licence. The petitioner's case should be considered on merit keeping in view the necessity of arm licence in pursuance to power conferred by Sections 13 and 14 of the Arms Act, 1959, in short Act.

7. The second limb of argument is that the District Magistrate should have passed speaking order by applying his mind keeping in view the provisions contained in Sub-section (3) of Section 14 of the Act.

8. It shall be appropriate to consider the provisions contained in Sections 13 and 14 of the Act which provides that after receipt of application for arm licence, the licensing authority shall call for a report of the officer incharge of the police station and after receipt of such report, it shall be open for the licensing authority to hold an enquiry as it may consider necessary. After receipt of the report, the licensing authority may either grant a licence or refuse to grant the same. For convenience,

relevant portion of Section 13 is reproduced as under:

13. Grant of licences.-(1) An application for the grant of a licence under Chapter II shall be made to the licensing authority and shall be in such form, contain such particulars and be accompanied by such fee, if any, as may be prescribed.

[(2) On receipt of an application, the licensing authority shall call for the report of the officer in charge of the nearest police station on that application, and such officer shall send his report within the prescribed time.

(2A) The licensing authority, after such inquiry, if any, as it may consider necessary, and after considering the report received under Sub-section (2), shall, subject to the other provisions of this Chapter, by order in writing either grant the licence or refuse to grant the same: Provided that where the officer in charge of the nearest police station does not send his report on the application within the prescribed time, the licensing authority may, if it deems fit, make such order, after the expiry of the prescribed time, without further waiting for that report.]

9. Thus, from a plain reading of Section 13 shows that a citizen has got statutory right to apply for grant of arm licence and such application should be considered by the licensing authority keeping in view the parameters given in Section 13 of the Act. The category of arm licence for which a licence may be granted by the licensing authority and its nature has been given in Sub-section (3) of Section 13 of the Act.

10. Apart from statutory right, while considering the application for grant of fire arm licence, the licensing authority shall also keep in mind that right to life is a fundamental right guaranteed under Article 21 of the Constitution of India. In case a person lacks criminal history and there is imminent danger to his life and liberty or grant of arm licence is necessary to save the property and life, then ordinarily, the licence should be granted to the citizen.

11. Section 14 of the Act deals with contingency with regard to refusal of arm licence. Sub-section (1) provides that in case the licensing authority has got reason to believe that the grant of arm licence is prohibited by law or a person or

applicant is of unsound mind or for any reason is unfit for a licence under the Act or the licensing authority deems it necessary for the security of the public peace or for public safety, then he can refuse such licence.

12. There cannot be refusal to grant licence only on the ground that the person does not possess sufficient property. It shall be obligatory on the part of the licensing authority while refusing to grant licence to apply his own mind giving a brief statement of facts which persuaded him to refuse the licence. For convenience. Section 14 of the Act is reproduced as under:

14. Refusal of licences.-(1) Notwithstanding anything in Section 13, 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 refuses to grant a licence to any person it shall record in writing the reasons 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.

13. Keeping in view the letter and spirit of Section 14 of the Act, ordinarily, it shall always be incumbent on the licensing authority to pass a speaking and reasoned order while refusing to grant licence. It shall be pre-requisite for the refusal to grant arm licence to examine all relevant facts and material on record.

14. Now, it is trite in law that every unreasoned order shall be hit by Article 14 of the Constitution of India vide Smt. Maneka Gandhi v. Union of India and Anr. : AIR 1978 SC 597 and Delhi Transport Corporation v. D.T.C. Mazdoor Congress : AIR 1991 SC 101.

15. In view of above, every order passed by the licensing authority while rejecting the application for grant of arm licence must be a reasoned order-may be precise, keeping in view the relevant material on record.

16. Sub-section (3) further provides that the licensing authority shall furnish on demand a brief statement unless in his opinion it shall be against public interest or furnishing of such opinion is detrimental to national security.

17. In the present case, the licensing authority instead of passing a reasoned order by applying his own mind has declined to grant arm licence merely by endorsement viz. 'refused'. Such decision of licensing authority seems to be arbitrary exercise of power. As observed (supra), the citizen has statutory right to obtain arm licence keeping in view the mandate of Article 21 of the Constitution of India and such a matter should not be dealt with mechanically without passing a reasoned order.

18. It is a basic principle of rule of law in a democratic society that a person against whom an adverse order is passed by administrative or quasi-judicial authorities, it must be reasoned so that the person must be aware of the grounds on which he has been denied his statutory right.

19. Needless to say that every order passed by the administrative or quasi-judicial authorities or the judicial authorities are subject to judicial review by the appellate

forum or this Court and when a citizen approaches for judicial review of an order passed by the administrative authority, such higher forum should move to gather the reason from the order itself and not from their affidavits or pleading on record.

20. The Constitution Bench of Hon'ble Supreme Court in the case in *Mohinder Singh Gill and Anr. v. Chief Election Commissioner, New Delhi and Ors.* : AIR 1978 SC 851, has held that every order must stand on its own leg and it cannot be supplemented through an affidavit.

21. In the present case, learned standing counsel has tried to defend the action of the District Magistrate on the ground that the members of the petitioner's family are history sheeters, hence refusal was proper but he failed to point out any criminal case pending against the petitioner. However, under what circumstances, the petitioner has been involved in the criminal activity of his family members seems to be not on record. All these aspects of the matter should have been considered by the licensing authority while passing the order.

22. In view of the above, the writ petition deserves to be allowed. A writ in the nature of certiorari is issued quashing the impugned order dated 29.4.2006 passed by the District Magistrate, Ghazipur with consequential benefits. A writ in the nature of mandamus is issued commanding the District Magistrate, Ghazipur to reconsider the petitioner's application for grant of fire arm licence keeping in view the observation made hereinabove expeditiously and preferably within a period of three months from the date of receipt of a certified copy of this order.

23. The writ petition is allowed accordingly. Costs easy.