

Om Prakash Vs. State of U.P. Thru Secy. Home and ors.

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Court : Allahabad

Decided On : Dec-22-2010

Judge : Anil Kumar, J.

Appeal No. : MISC. SINGLE No. - 2242 of 2006

Appellant : Om Prakash

Respondent : State of U.P. Thru Secy. Home and ors.

Advocate for Def. : C.S.C. Adv

Advocate for Pet/Ap. : K.N.Mishra, Adv

Judgement :

1. Heard Sri K.N. Mishra, learned counsel for the petitioner and Sri Rakesh Srivastava, learned Standing Counsel on behalf of the opposite parties.
2. By means of the present writ petition, the petitioner has challenged the impugned orders dated 07.01.2006 (Annexure-2) passed by Commissioner, Devi Patan Mandal, Gonda rejecting the petitioner's appeal and order dated 23.02.2005 (Annexure-1) passed by District Magistrate, Gonda by which the petitioner's application for grant of licence for 315 Bore Rifle has been rejected.
3. In brief the facts of the present case are that the petitioner has applied for a licence of N.P. Bore Rifle in the year 1999, thereafter the O.P. No. 3/District

Magistrate, Gonda/Licencing Authority called the report from the concerned police authority in order to consider the matter regarding grant of arm licence.

4. On 22.02.2005, Superintendent of Police, Gonda submitted a report against the petitioner stating therein that a criminal case No. 154 of 2000 under Section 147, 148, 149 307, 427 IPC has been registered in which the final report has been submitted by the police in the court of ACJM, 1st Gonda, and the same is under consideration. In the said report it is stated that the petitioner already possessed a licence in respect to SBBL 12 Bore Gun and he has a criminal history, so there is no justification or reason to grant another licence.

5. Taking into consideration the said report dated 22.02.2005 submitted by Superintendent of Police, Gonda, the Licencing Authority/District Magistrate, Gonda by order dated 23.02.2005 rejected the petitioners application for grant of licence for NP Bore Rifle, challenged by him before the Appellate Authority/Commissioner, Devi Patan Mandal, Gonda, who dismissed the appeal on the ground that a criminal case against the petitioner is pending and he has already a SBBL Gun licence. Hence the present writ petition has been filed before this Court.

6. Learned counsel for the petitioner while assailing the impugned orders dated 23.02.2005 and 07.01.2006 passed by O.P. Nos. 3 and 2 submitted that they are illegal and arbitrary in nature as the same have been passed on the recommendation of the Superintendent of Police, Gonda dated 22.02.2005 without application of their own mind.

7. He further submits that in the criminal case registered against the petitioner, the police authority has already submitted the final report, so there is no justification or reason for not granting the licence in his favour.

8. Learned counsel for the petitioner further submits that the O.P. Nos. 2 and 3 failed to appreciate the fact that the petitioner who has already a licence of SBBL Gun since the year 2002 thereafter renewed from time to time, so keeping the said facts and the provisions as provided under Section 15(3) of the Arms Act, 1959 (hereinafter referred to as the Act) read with Section 13 of the Act, no good

reasons or grounds exist on the part of the opposite parties not to grant second licence him in respect to the N.P. Bore Rifle rather the same is contrary to the mandatory provisions as provided under Section 3(2) of the Act by which a person can have three fire arms licences in his possession at any time. In order to support the said contention, learned counsel for the petitioner relied on the following judgments (a) Sunil Shukla, Advocate v. State of U.P. & Ors. [2010(I) JIC 232 (All)] (b) Wasim Ahmad v. State of U.P. & Ors. [2010 (2) JIC 585 (All)].

9. In view of the abovesaid facts, counsel for the petitioner submits that the impugned orders dated 23.02.2005 and 07.01.2006 are contrary to law and liable to be set aside.

10. Sri Rakesh Srivastava, learned Standing Counsel for the respondents submits that on the application submitted by the petitioner for grant of licence of N.P. Bore Rifle, the District Magistrate/Licencing Authority vide a letter dated 10.12.2002 called a report from Sub-Divisional Magistrate and Superintendent of Police, Gonda and in the said report dated 22.02.2005, it was recommended for not issuing the required the licence as sought by the petitioner, keeping in view the said facts, a criminal history of the petitioner and he already has a Single Bore Gun in his possession. The O.P. No. 3 rejected his application for grant of another licence.

11. Sri Rakesh Srivastava, learned counsel for the respondents further submits that as per Section 14(1) (b)(i)(3) of the Act. Licencing Authority can refuse to grant a licence for any reason which it may deem fit and proper before granting a licence under the Act. So, the order dated 23.02.2005 passed by O.P. No. 3 thereby rejecting the petitioner's application and order dated 07.01.2006 passed by Appellate Authority/O.P. No. 2 dismissing his appeal is perfectly valid, the present writ petition is liable to be dismissed.

12. I have heard the counsel for the parties and gone through the record. Before adjudicating and deciding the dispute involved in the present case, it s appropriate to have some mandatory provisions which govern the filed in question.

13. Chapter II of the Arms Act 1959 provides for acquisition, possession, manufacture, sale, import, export and transport of arms and ammunition and the relevant portion of Section 3(2) therein are as under:-

"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 to carry, at any time, more than three firearms."

14. Chapter III of the Arms Act deals with the provisions relating to licences and Section 13 therein provides the procedure in respect to grant of licence the same is reproduced hereinbelow:-

"(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) [Note: Subs. by Act 25 of 1983, s. 6 (w.e.f. 22-6-1983)] 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 deem fit, make such order, after the expiry of the prescribed time, without further

waiting for the report].

(3) The licensing authority shall grant -

(a) A licence under section 3 where the licence is required -

(i) By a citizen of India in respect of a smooth bore gun having a barrel of not less than twenty inches in length to be used for protection or sport or in respect of muzzle loading gun to be used for bona fide crop protection:

Provided that where having regard to the circumstances of any case, the licensing authority is satisfied that in muzzle loading gun will not be sufficient for crop protection, the licensing authority may grant a licence in respect of any other smooth bore gun aforesaid for such protection, or

(ii) In respect of a point 22 bore rifle or an air rifle to be used for target practice by a member of rifle club or rifle association licensed or recognised by the Central Government ;

(b) A licence under section 3 in any other case or licence under section 4, section 5, section 6, section 10 or section 12, if the licensing authority is satisfied that the person by whom the licence is required has a good reason for obtaining the same."

15. Section 14 of the Arms Act lays down the conditions on which the licence can be refused to a person the relevant portion of Section 14 are being reproduced hereinbelow:-

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 then 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.

16. Lastly Section 15 of the Arms Act provides for Duration and renewal of licence, and the relevant portion i.e. Sub-Section 3 of Section 15 is being reproduced hereinbelow:-

"(3) Every licence shall, unless the licensing authority for reasons to be recorded in writing otherwise decides in any case, be renewable for the same period for which the licence was originally granted and shall be so renewable from time to time, and the provisions of section 13 and 14 shall apply to the renewal of a licence as they apply to the grant thereof."

17. Now reverting to the facts of the present case it is not disputed between the parties that the petitioner is already holder of a Gun Licence No. 783 in respect to the SB Gun 12 Bore and he has applied for another licence for N.P. Bore Rifle to the O.P. NO. 3/Licencing Authority.

18. Thereafter, the said authority called the report from the concerned police authorities in order to consider the petitioner's application for grant of Arms Licence. In response to the same, Superintendent to Police, Gonda submitted a report dated 22.02.2005 inter alia stating therein that a criminal Case bearing Case Crime No. 154 of 2000 under Section 147, 148, 149, 37 and 427 I.P.C. registered in Police Station-Kotwali, Gonda in which a final report was submitted in the Court of ACJM, Gonda.

19. Further the said authority has also recommended that the petitioner has a licence in respect to S.B. 12 Bore Gun he has a criminal background, so second licence should not be granted to him taking into consideration the said fact and without giving any reasons whatsoever, by way of non-speaking order, the Licencing Authority/District Magistrate, Gonda rejected the petitioner's application for grant of licence vide order dated 23.02.2005 and appeal was also dismissed by the appellate authority/Commissioner, Devi Patan Mandal, Gonda.

20. Needless to mention herein that it is a well settled provisions of law that any order which has been passed by the authority must always be supported with adequate reasons and justifications and in the present case, the order passed by the Licencing Authority is non-speaking order and is passed without disclosing any reasons whatsoever, so the same cannot be sustained.

21. Further in the present case there is only one criminal matter against the petitioner and in which the police has submitted his final report. Moreover, he is a holder of an arms licence in respect to S.B. 12 Bore Gun, granted in his favour in the year 2002 subsequently renewed as per the provisions of Sub-Section 3 of Section 15 of the Act, the said Section provides that the licence which has been granted shall be so renewable from time to time and the provisions of Section 13 and 14 of the Act shall apply to the renewal of licence as they may apply to grant thereof.

22. Reading the provisions of the Section 19 (3) and provisions in respect to grant of fresh licence as provided under Section 13 of the Arms Act, the action on the part of the O.P. No. 3 to refuse the grant of second licence to the petitioner is an action which is contrary to law, because as per the Sub-Section 3 of Section 2 of the Act a person can acquire or possess three fire arms licences at any time so the orders which are under challenge in the present writ petition are arbitrary in nature and cannot sustain.

23. In the case of Sunil Shukla, Advocate v. State of U.P. & Ors. [2010 (1) JIC 232 (All)].

"I have considered the submissions the parties and have perused the record. From the perusal of the Act it is clear that a person who is having arm licence, can make another application and can acquire and possess three fire-arms and arm licences in view of Section 3 of the Act. Even the proviso requires a person having more than three arms on the date of amendment of the Act of 1983 which came into force, to surrender more than three arms. Thus the acquiring and possessing of more than one arm is not prohibited. On the other hand, it is permitted. From the perusal of Section 3 of the Act, it appears that it does not provide that for acquiring a licence for the second arm, the applicant has to disclose some special reason. In case the law does not provide or prescribe, in that circumstances, the question is whether the authorities below can reject the application filed by a person disclosing this fact that he is having a licence of a particular arm. The application of other fire-arm made by the petitioner could have been rejected by the respondents on the ground that the police report was not submitted in his favour. But this is not the position in the present case. The police authorities have submitted a report in favour of the petitioner. Therefore, as the order passed by the District Magistrate does not disclose any reason for refusing the licence for possessing the DBBL gun by the petitioner, the only reason assigned in the

impugned order is that the petitioner has not disclosed any special reason for acquiring the second arm licence. If law does not prohibit the petitioner from obtaining another arm licence, it could not have been refused by the respondents on the ground that special reasons to be recorded were required to be intimated in the application made by the petitioner. In view of the aforesaid fact, the order passed by the District Magistrate dated 1-12-08 cannot be sustained."

24. In the case of Wasim Ahmad v. State of U.P. & Ors. [2010 (2) JIC 585 (All)] this Court has held that in paragraph Nos. 12 and 12 has held as under:-

25. Para 12 - A Division Bench of this Court in the case of Ram Shanker v. State of U.P. 1980 A.W.C. 154, has laid down that the absence of genuineness of the need is not a ground for refusing a licence under Section 14 of the Act. Lack of genuineness of the need is therefore, not one of the ground for refusing a licence.

26. Identical question was considered by the learned Single Judge in Case of Ram Khelawan Misra v. state of U.P. and another, 1982 A.W.C. 123 and in paragraph nos. 6 and 10 of the aforesaid judgment this court held as under:-

"6. In the present case, the District Magistrate has in his order stated that the S.D.M. and the Superintendent of Police have written ' No objection' on the application of the petitioner, but that was not a recommendation for the grant of a licence. He has ultimately observed that the need of the applicant was not genuine. It would, therefore, be seen that the order passed by the District Magistrate does not come under any of the clauses of Sec. of the Act. The expression to be for any reason unfit for a licence under the Act is not synonymous with the applicant not having genuine need. Section 14 of the Act prohibits the grant of a licence where the person is under some disability, or is of unsound mind or where he is such type person who may endanger the public peace or public

safety. The plea that the petitioner does not have a genuine need cannot be equated with any of the clauses under sec. 14 of the Act. There is no provision in sec. 14 of the act to refuse a licence if the need of the applicant is not genuine. A Division Bench of this Court in the case of Ram Shanker v. State of U.P., 1980 A.W.C. 154, has laid down that the absence of genuineness of the need is not a ground for refusing a licence under Sec. 14 of the Act. . Lack of genuineness of the need is therefore not one of the grounds for refusing a licence."

10. Section 14 of the Act commences with a non obstante clause (notwithstanding anything in Sec. 13) and then lays down the grounds for refusing to grant the licence. Since the grant of a licence can be refused only under the provisions of Sec. 14 and its sub-clauses, I do not find any provision which permits the licensing authority to refuse the grant of a licence on the ground that the applicant did not establish a genuine need. "

27. Similar view was taken by this Court in the case of Ram Chandra Yadav v. State of U.P. reported in 2009 (9) ADJ, 2007.

Para 13 - The failure of the appellate authority to re-deem the illegality committed by the licensing authority, Additional District Magistrate, Gorakhpur has rendered the order of appellate authority also totally unsustainable. Hence in view of the settled legal position on the issue that the fire arm licence can not be refused merely on the ground that the need of licence is not genuine, the orders passed by the respondent no. 2 and 3 are totally unsustainable in the eyes of law and are liable to be set aside.

28. For the foregoing reasons, the impugned orders dated 07.01.2006 (Annexure-2) passed by Commissioner, Devi Patan Mandal, Gonda and order dated 23.02.2005 (Annexure-1) passed by District Magistrate, Gonda are set aside and the matter is remanded back to the Licencing Authority/District Magistrate, Gonda to consider afresh in accordance with law in respect to grant of arms licence to the petitioner in response to his application submitted for the said purpose

expeditiously, say, within a period of four months from the receiving the certified copy of this order.

29. With the above observations, the writ petition is allowed.

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