

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8966 of 2019

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Arjun Sharma S/o Nanku Sharma R/o Village-Jamuawan, P.S. Parasbigha,
District-Jehanabad

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner, Magadh Division, Gaya
2. The Commissioner Magadh Division, Gaya
3. The District Magistrate Jehanabad
4. The District Arms Magistrate Jehanabad
5. The Superintendent of Police Jehanabad
6. The Officer in-Charge Parasbigha Police Station, Jehanabad, District-Jehanabad

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shivendra Prasad
For the Respondent/s : Mr. (Ga4)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 17-09-2019

1. The present writ petition has been filed for quashing the order dated 14.08.2018 passed by the District Magistrate-cum-Collector, Jehanabad in Arms case no. 11-DM-2015-18, whereby and whereunder the District Magistrate-cum-Collector, Jehanabad has rejected the application of the petitioner for grant of firearm licence on the ground that the format in which the petitioner had applied for grant of firearm licence, is as per the old rules whereas now, the new rules have come in existence i.e. the Arms Rules, 2016.

2. The brief facts of the case are that the petitioner had filed



an application before the District Magistrate-cum-Collector, Jehanabad for grant of arms licence on 14.03.2013 for N.P. Bore rifle. Thereafter, the District Magistrate-cum-Collector, Jehanabad had called for a report from the Superintendent of Police, Jehanabad and the Superintendent of Police, Jehanabad, in turn had asked the Inspector concerned to inquire into the matter and submit a report whereupon the Inspector of Police, Jehanabad had submitted a report dated 11.12.2014 and the said Inspector had reported that the need of the petitioner for grant of arms licence is genuine since he needs the same for the purpose of safety of his life and property. The said report was placed before the Deputy Superintendent of Police, Jehanabad, Additional Superintendent of Police, Jehanabad and the Sub-divisional Officer, Jehanabad, who too, recommended the case of the petitioner for grant of firearm licence and the report of the Inspector of Police was forwarded to the Superintendent of Police, Jehanabad. The Superintendent of Police, Jehanabad is also stated to have forwarded the case of the petitioner finally to the District Magistrate, Jehanabad, however the District Magistrate, Jehanabad by an order dated 24.07.2015, rejected the case of the petitioner for grant of arms licence on the ground that the Superintendent of Police, Jehanabad, in his inquiry



report, has not mentioned about any specific threat perception to the petitioner herein. The petitioner had then challenged the said order dated 24.07.2015 in Arms Appeal no. 181 of 2015, before the Commissioner, Magadh Division, Gaya who had then remanded the matter back to the District Magistrate to consider the fresh/new issue which had arisen during the appeal proceedings i.e. to the effect that the son of the petitioner has filed one Parasbigha PS case no. 13 of 2013 dated 17.03.2013, in which, probably the charge sheet has also been submitted and the matter is pending consideration, as such the petitioner is in need of firearms so that during the pendency of the aforesaid criminal case, no untoward incident may take place. Thereafter, the petitioner had filed an application before the District Magistrate, Gaya, whereafter Arms case no. 11 of 2015-18 was proceeded with and the learned District Magistrate, Gaya had called for a report from the Superintendent of Police, Jehanabad vide letter dated 19.12.2017. The Superintendent of Police, Jehanabad thereafter, directed the subordinate police officers to submit a report in pursuance whereof, the Officer-in-charge, Parasbigha Police Station had submitted a report dated 02.01.2018 to the effect that the wife of the petitioner who is *Mukhia* of the Gram Panchayat, had made efforts for



construction of I.T.I. College building through the *Aam Sabha*, which was under occupation of the members of an extremists organisation namely “MALE”, therefore she was being targeted by the extremists.

3. It is the contention of the learned counsel for the petitioner that the District Magistrate kept the matter pending and finally, by the impugned order dated 14.08.2018, has rejected the application of the petitioner dated 14.03.2013 for grant of arms licence on the ground that the Government of India has published new Arms Rules, 2016 in the gazette which is evident from letter dated 15.07.2016, hence the petitioner is required to submit fresh application in the newly prescribed application form since it would be legal to issue any new arms licence, only in accordance with the prevailing rules i.e the Arms Rules, 2016. In such view of the matter, while rejecting the application of the petitioner for grant of arms licence, the petitioner was suggested to file fresh application in accordance with the Arms Rules, 2016 for the purposes of grant of arms licence which would be considered in accordance with law.

4. The learned counsel for the petitioner has further submitted that since the petitioner had applied for grant of arms licence on 14.03.2013 and the learned Commissioner, Magadh



Division, Magadh had remanded the matter back to the District Magistrate, Jehanabad vide order dated 21.09.2017, the 2016 Rules were not relevant and the District Magistrate, Jehanabad ought to have considered the application of the petitioner for grant of arms licence on merits. Hence, it is submitted that the impugned order dated 14.08.2018 is perverse, illegal and contrary to law, thus is fit to be set aside.

5. The learned counsel for the petitioner has relied upon a judgment rendered by the Hon'ble Apex Court, reported in ***(1994) 5 SCC 593 (KS Paripurnan v. State of Kerala and others)***, paragraphs no. 65, 66, 67 and 68 whereof, are reproduced herein below:-

“ 65. These principles are equally applicable to amendatory statutes. According to Crawford:

"Amendatory statutes are subject to the general principles ... relative to retroactive operation. Like original statutes, they will not be given retroactive construction, unless the language clearly makes such construction necessary. In other words, the amendment will usually take effect only from the date of its enactment and will have no



application to prior transactions, in the absence of an expressed intent or an intent clearly implied to the contrary. Indeed there is a presumption that an amendment shall operate prospectively." (See Crawford's Statutory Construction, pp. 622-23)

66. The dictum of Lord Denman, C.J. in R. v. St. Mary, Whitechapel that a statute which is in its direct operation prospective cannot properly be called a retrospective statute because a part of the requisites for its action is drawn from time antecedent to its passing, which has received the approval of this Court, does not mean that a statute which is otherwise retrospective in the sense that it takes away or impairs any vested right acquired under existing laws or creates a new obligation or imposes a new duty or attaches a new disability in respect to transactions or considerations already past, will not be treated as retrospective. In *Alexander v. Mercouris Goff*, L.J., after referring to the said observations of Lord Denman, C.J., has observed that a statute would not be operating prospectively if it creates new rights and duties arising out of past transactions. The question whether a



particular 1 (1848) 12 QB 120, 127 : 17 LJMC 172 : 116 ER 811 19 (1979) 3 All ER 305 : (1979) 1 WLR 1270 statute operates prospectively only or has retrospective operation also will have to be determined on the basis of the effect it has on existing rights and obligations, whether it creates new obligations or imposes new duties or levies new liabilities in relation to past transactions. For that purpose it is necessary to ascertain the intention of the legislature as indicated in the statute itself.

67. In the instant case we are concerned with the application of the provisions of sub-section (1-A) of [Section 23](#) as introduced by the amending Act to acquisition proceedings which were pending on the date of commencement of the amending Act. In relation to pending proceedings, the approach of the courts in England is that the same are unaffected by the changes in the law so far as they relate to the determination of the substantive rights and in the absence of a clear indication of a contrary intention in an amending enactment, the substantive rights of the parties to an action fall to be determined by the law as it existed when the action was commenced and this is so whether the law is changed before the



hearing of the case at the first instance or while an appeal is pending. (See Halsbury's Laws of England, 4th Edn., Vol. 44, para 922.) Similar is the approach of the courts in India. In United Provinces v. Atiq Begum Sulaiman, J. has observed: (FCR p. 163) "Undoubtedly, an Act may in its operation be retrospective, and yet the extent of its retrospective character need not extend so far as to affect pending suits. Courts have undoubtedly leaned very strongly against applying a new Act to a pending action, when the language of the statute does not compel them to do so."

To the same effect are the observations of Varadachariar, J., who has stated: (FCR pp. 185-186) "There can be little doubt that there is a well-recognised presumption against construing an enactment as governing the rights of the parties to a pending action. ... There are two recognised principles, (1) that vested rights should not be presumed to be affected and (2) that the rights of the parties to an action should ordinarily be determined in accordance with the law as it stood at the date of the commencement of the action. The language used in an enactment may be sufficient to rebut the first presumption, but not the second. Where it is intended to make a new



law applicable even to pending actions, it is common to find the legislature using language expressly referring to pending actions."

68. In the words of S.R. Das, C.J. 27:

"The golden rule of construction is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed."

26 1940 FCR 110 : AIR 1941 FC 16 27
Garikapatti Veeraya v. N. Subbiah
Choudhury, 1957 SCR 488, 515-16 : AIR
1957 SC 540 In order that the provisions of
a statute dealing with substantive right may
apply to pending proceedings the Court has
insisted that the law must speak in language
which expressly or by clear intendment,
takes in even pending matters. (See
Dayawati v. Inderjit²⁸ and Lakshmi
Narayan Guin case²².)"

6. It would be relevant to mention at this juncture that this Court by an order dated 19.06.2019 had directed the District Magistrate, Jehanabad to file an affidavit on the point as to how the 2016 Rules is relevant in the instant case when the



Commissioner of the Division has remanded the matter back to the District Magistrate for fresh consideration.

7. The respondents have filed a counter affidavit in the present case, wherein it has been stated that the impugned order dated 14.08.2018 has been passed after following the due process of law, which is reflected from the said order dated 14.08.2018, in which, all the facts have been mentioned clearly. It has been further stated that the petitioner had filed an application for grant of arms licence on 14.03.2013 which was rejected vide order dated 24.07.2015 by the District Magistrate, Jehanabad on the point that there was no specific threat perception to the petitioner herein, however the same was challenged in appeal and the Divisional Commissioner, Gaya remanded the matter back to the District Magistrate, Jehanabad on account of the subsequent development in the matter to the effect that unsocial elements had attacked the petitioner. It is further submitted that during the pendency of the application of the petitioner for grant of arms licence, new Arms Rules, 2016 came into effect on 15.07.2016, as such, the District Magistrate, Jehanabad has observed that the arms licence should be given on the basis of new rules and regulations, hence has also advised the petitioner to file fresh application under Rule 11 of the



amended Arms Rules, 2016 and in case, such an application is filed, the same shall be considered in accordance with law. It is further submitted that District Magistrate, Jehanabad has come to the conclusion that since the Arms Rules, 2016 are in force and the previous Arms Rules, 1962 have been superseded, the new Arms Rules, 2016 are to be applied to the pending petitions for grant of arms license. In nutshell, it is the submission of the learned counsel for the respondent- State that the old application of the petitioner has become redundant and the only remedy available to the petitioner is by way of filing a fresh application for grant of Arms license under the new Arms Rules, 2016.

8. I have heard the learned counsel for the parties and perused the materials on record as also considered the judgment referred to by the learned counsel for the petitioner. This Court is of the view that the pending application of the petitioner for grant of Arms licence cannot be said to have become redundant with the coming into force of the new Arms Rules, 2016, inasmuch as the said new Arms Rules, 2016 have come into force on the date of their publication in the official gazette i.e. 15.07.2016, as defined in Section 1 of the Arms Rules, 2016, hence are prospective in nature and moreover, the said Arms Rules, 2016, nowhere postulates that the earlier applications



filed under the old rules for the purposes of grant of arms licence shall stand invalidated automatically and would not be liable to be considered. It is a well settled law that the pending application cannot be brushed aside and not acted upon/ considered by the respondent- authorities merely on the pretext that the new rules/ amendments have come into force, however it is equally a well settled law that mere filing of an application does not confer any vested right on the applicant and the application has to be decided in accordance with law applicable on the date on which the authority authorized to decide the said application is called upon to apply its mind to the prayer made by the applicant.

9. In this connection, this Court deems it useful to refer to a judgment rendered by the Hon'ble Apex Court reported in ***(2010) 5 SCC 186 (State Of Kerala & Anr vs M/S. B. Six Holiday Resorts (P) Ltd. And others)***, paragraphs no. 16, 17, 19, 20, 21, 22 and 28 whereof, are reproduced herein below :-

“16. Two issues arise for consideration on the contentions urged:

(i) Whether an application for grant of FL-3 licence should be considered with reference to the Rules as they existed when the application was made or in accordance with the Rules in force on the date of



consideration?

(ii) Whether the amendment to Rule 13(3) of the Foreign Liquor Rules substituting the last proviso is valid?

Re: Question (i)

17. This question is directly covered by the decision of this Court in Kuldeep Singh v. Govt. of NCT of Delhi-relating to the grant of licences for sale of Indian-made foreign liquor. This Court held: (SCC pp. 713 & 715, paras 29-31 & 36)

“29. It is not in dispute that the State received a large number of applications. It was required to process all the applications. While processing such applications, inspections of the proposed sites were to be carried out and the contents thereof were required to be verified. For the said purpose, the applications were required to be strictly scrutinised.

30. Unless, therefore, an accrued or vested right had been derived by the appellants, the policy decision could have been changed.

31. What would be an acquired or accrued right in the present situation is the question.

* * *

36. In a case of this nature where the State has the exclusive privilege and the citizen



has no fundamental right to carry on business in liquor; in our opinion, the policy which would be applicable is the one which is prevalent on the date of grant and not the one, on which the application had been filed. If a policy decision had been taken on 16-9-2005 not to grant L-52 licence, no licence could have been granted after the said date.”

19. *In State of T.N. v. Hind Stone—this Court considered the validity of government action in keeping applications pending for long and then rejecting them by applying a rule subsequently made. This Court while holding that such action is not open to challenge observed: (SCC pp. 219-20, para 13)*

“13. ... The submission was that it was not open to the Government to keep applications for the grant of leases and applications for renewal pending for a long time and then to reject them on the basis of Rule 8-C notwithstanding the fact that the applications had been made long prior to the date on which Rule 8-C came into force. While it is true that such applications should be dealt with within a reasonable time, it cannot on that account be said that the right to have an application disposed of in a reasonable time clothes an applicant for a



lease with a right to have the application disposed of on the basis of the rules in force at the time of the making of the application. No one has a vested right to the grant or renewal of a lease and none can claim a vested right to have an application for the grant or renewal of a lease dealt with in a particular way, by applying particular provisions. In the absence of any vested rights in anyone, an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application despite the fact that there is a long delay since the making of the application.”

20. *We may next refer to the decision in Union of India v. Indian Charge Chrome wherein this Court held: (SCC p. 327, para 17)*

“17. ... Mere making of an application for registration does not confer any vested right on the applicant. The application has to be decided in accordance with the law applicable on the date on which the authority granting the registration is called upon to apply its mind to the prayer for registration.”

21. *The applicant contended that it had a vested right because of the several time-bound orders of the High Court and those orders were deliberately*



flouted by the Excise Authorities. An identical contention was rejected by this Court while considering the issue with reference to sanction of a licence under the Building Rules in Howrah Municipal Corpn. v. Ganges Rope Co. Ltd. This Court held: (SCC pp. 679-80, paras 36-37)

“36. ... Neither the provisions of the Act nor general law creates any vested right, as claimed by the applicant Company for grant of sanction or for consideration of its application for grant of sanction on the then existing Building Rules as were applicable on the date of application. Conceding or accepting such a so-called vested right of seeking sanction on the basis of the unamended Building Rules, as in force on the date of application for sanction, would militate against the very scheme of the Act contained in Chapter XII and the Building Rules which intend to regulate the building activities in a local area for general public interest and convenience. It may be that the Corporation did not adhere to the time-limit fixed by the court for deciding the pending applications of the Company but we have no manner of doubt that the Building Rules with prohibition or restrictions on construction activities as applicable on the date of grant or refusal of sanction would govern the subject-matter and not the Building Rules as



they existed on the date of application for sanction. No discrimination can be made between a party which had approached the Court for consideration of its application for sanction and obtained orders for decision of its application within a specified time and other applicants whose applications are pending without any intervention or order of the Court.

37. ... The context in which the respondent Company claims a vested right for sanction and which has been accepted by the Division Bench of the High Court, is not a right in relation to 'ownership or possession of any property' for which the expression 'vest' is generally used. What we can understand from the claim of a 'vested right' set up by the respondent Company is that on the basis of the Building Rules, as applicable to their case on the date of making an application for sanction and the fixed period allotted by the Court for its consideration, it had a 'legitimate' or 'settled expectation' to obtain the sanction. In our considered opinion, such 'settled expectation', if any, did not create any vested right to obtain sanction. True it is, that the respondent Company which can have no control over the manner of processing of application for sanction by the Corporation cannot be blamed for delay but



during pendency of its application for sanction, if the State Government, in exercise of its rule-making power, amended the Building Rules and imposed restrictions on the heights of buildings on G.T. Road and other wards, such 'settled ¹⁹³ expectation' has been rendered impossible of fulfilment due to change in law. The claim based on the alleged 'vested right' or 'settled expectation' cannot be set up against statutory provisions which were brought into force by the State Government by amending the Building Rules...."

(emphasis in original)

22. *Where the rules require grant of a licence subject to the fulfilment of certain eligibility criteria either to safeguard public interest or to maintain efficiency in administration, it follows that the application for licence would require consideration and examination as to whether the eligibility conditions have been fulfilled or whether grant of further licences is in public interest. Where the applicant for licence does not have a vested interest for grant of licence and where grant of licence depends on various factors or eligibility criteria and public interest, the consideration should be with reference to the law applicable on the date when the authority considers applications for grant of licences and not with reference to the date of application.*



23. The applicant submitted that it had originally filed an application on 11-12-2000 and in pursuance of the decision of the High Court on 14-12-2001, it submitted an application on 19-12-2001 and that application was considered and disposed of on 27-12-2001. The applicant contended that even if the principle laid down in Kuldeep Singh was applied, the application having been considered and disposed of by the authority concerned on 27-12-2001, the law in force on that day ought to have been applied. The applicant further contended that the amendment to the Rules which came into effect only on 20-2-2002, was not applicable on 27-12-2001 and therefore the rejection on 27-12-2001 was bad and consequently the impugned order of the High Court may be construed as requiring the authority to decide the matter as on 27-12-2001. We find that the said contention does not have any merit.

24. It is true that the application was given on 19-12-2001. It is true that the application was considered and rejected on 27-12-2001 on a ground which may not be sound. It is also true that the amendment to the Rules which was introduced by Notification dated 20-2-2002 was not in force or effect on 27-12-2001. But the said Order dated 27-12-2001 was neither challenged nor set aside by the High Court. The applicant chose to file a contempt application alleging that the Excise Authorities had disobeyed the order dated 14-12-



2001.

25. In the contempt case, the High Court made an order on 12-2-2002 that the new Excise Commissioner should pass an order on the application. Therefore the only question is whether the order passed by the Excise Commissioner on 20-2-2002 was in accordance with the Rules as they stood on 20-2-2002. Under the amended Rules, no new FL-3 licence could be issued. Consequently, the rejection of the application by Order dated 20-2-2002 was in accordance with the Rules and cannot be faulted.

26. Learned counsel appearing for the applicant next contended that the decision in Kuldeep Singh¹ was not with reference to any statutory rules, but with reference to a policy of the executive and therefore inapplicable. We find no force in this argument.

27. It is true that in Kuldeep Singh case there were no statutory rules and what was considered was with reference to a policy. But the ratio of the decision is that where licence sought related to the business of liquor, as the State has exclusive privilege and its citizens had no fundamental right to carry on business in liquor, there was no vested right in any applicant to claim an FL-3 licence and all applications should be considered with reference to the law prevailing as on the date of consideration and not with reference to the date of



application. Whether the issue relates to amendment to Rules or change in policy, there will be no difference in principle. Further, the legal position is no different even where the matter is governed by statutory rules, is evident from the decisions in Hind Stone and Howrah Municipal Corpn.

28. Having regard to the fact that the State has exclusive privilege of manufacture and sale of liquor, and no citizen has a fundamental right to carry on trade or business in liquor, the applicant did not have a vested right to get a licence. Where there is no vested right, the application for licence requires verification, inspection and processing. In such circumstances it has to be held that the consideration of application of FL-3 licence should be only with reference to the rules/law prevailing or in force on the date of consideration of the application by the Excise Authorities, with reference to the law and not as on the date of application. Consequently, the direction by the High Court that the application for licence should be considered with reference to the Rules as they existed on the date of application cannot be sustained. “

10. As far as the judgment referred to by the learned counsel for the petitioner in the case of **KS Paripurnan (supra)** is concerned, the same holds that the pending proceedings would



remain unaffected by the changes in the law so far as the same relates to determination of the substantive rights. However, the present case does not deal with regard to determination of any substantive rights of the petitioner whereas on the contrary, he has neither got any fundamental right, under the Constitution of India, to possess arms nor has a vested right under the law for grant of arms licence, thus the judgment rendered by the Hon'ble Supreme Court in the ***KS Paripurnan (supra)*** is clearly distinguishable in the facts and circumstances of the present case. This Court further finds that the present case is squarely covered by the judgment of the Hon'ble Apex Court rendered in the case of ***State Of Kerala & Anr vs M/S. B. Six Holiday Resorts (P) Ltd. and others (supra)***, hence though the application made by the petitioner earlier for grant of arms licence cannot become redundant with the coming into force of the new Arms Rules, 2016, however this Court is of the opinion that the pending application of the petitioner herein for grant of arms licence is required to be considered with reference to the rules/ law prevailing or in force on the date of consideration of the application by the District Magistrate, Jehanabad i.e. with reference to the new Arms Rules, 2016.

11. Considering the facts and circumstances of the case and



for the reasons mentioned hereinabove, the present writ petition stands allowed, the impugned order dated 14.08.2018, passed by the District Magistrate, Jehanabad in Arms case no. 11-DM-2015-18 stands quashed and the matter stands remitted back to the District Magistrate, Jehanabad, who is directed to consider the pending application of the petitioner for grant of arms licence, with reference to the new rules i.e. Arms Rules, 2016 and pass a fresh order within six weeks of receipt/production of a copy of this Order.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	19.05.2020
Transmission Date	NA

