

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1855 of 2015

Shailendra Kumar, son of late Ramadhar Prasad Sinha, resident of Mohalla Munna Chak, P.S. Patrakar Nagar (Kankarbagh), Town & district Patna
... Appellant

Versus

1. The State Of Bihar through Home Commissioner, Government of Bihar, Patna
2. The Divisional Commissioner, Patna Division, North-West Gandhi Maidan, Patna
3. The District Magistrate, Patna ... Respondents

Appearance :

For the Appellant : Mr. Kumar Binode Bariar, Adv.

For the Respondents : Mr. Jitendra Kumar, AC to AAG XIV

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 23-01-2019

Heard Mr. Kumar Binode Bariar, learned counsel appearing for the petitioner, and Mr. Jitendra Kumar, AC to AAG XIV.

2. This appeal arises out of from a judgment and order, dated 29.07.2015, passed in C.W.J.C. No. 11092 of 2011 whereby the writ petition is dismissed.

3. Pleadings on record would show that the writ petition was filed by the appellant-petitioner being aggrieved by the order bearing Memo No. 2580, dated 16.07.2001, passed by the District Magistrate, Patna, whereby the application of the petitioner for grant of arms licence was rejected, inter alia, on the grounds of pending criminal cases and non-disclosure of the fact that the appellant-petitioner was already a licensee in respect of other fire arms. This order has been affirmed in appeal by the Commissioner, Patna Division, Patna, when



the Arms Appeal No. 369 of 2007 of the appellant-petitioner was rejected on 24.05.2011.

4. It is stated by Mr. Bariar, learned counsel appearing for the appellant-petitioner, that there was no suppression by the petitioner nor there was any non-disclosure of any information on the licence because in the year 1989, the petitioner possessed no other licence. Learned counsel in reference to the provision of Section 3 of the Arms Act, 1959, submits that it entitles a person to possess three arms and, thus, the petitioner applied for such number of licenses. He submits that while two of his three applications were allowed and he was granted arms licence in respect of Non-prohibited bore rifle, bearing no. 1369 of 1989 and a double barrel gun, bearing no. 1449 of 1992, his third application remained pending and at that stage there was no license possessed by the petitioner. He, thus, submits that the allegation of non-disclosure is not correct rather the Collector as well as the appellate authority have failed to appreciate that while the application of the appellant-petitioner for grant of arms license in respect of three different arms were filed at the same time and of which, two were accepted, which resulted in grant of license, referred to above, the third application for Non-prohibited bore revolver/pistol remained pending and came to be considered later.



5. In so far as the two criminal cases, referred to by the Collector, is concerned, he submits that while the appellant-petitioner had been acquitted in one of the cases arising out of Kankarbagh (Kadamkuan) P.S. Case No. 858 of 1992, in the other case bearing Kankarbagh (Kadamkuan) P.S. Case No.502 of 1982 the petitioner executed a bond on 19.05.1997 and which got exhausted on 18.05.1998. He, thus, submits that in such circumstances where the licensing authority, itself, took more than two decades to consider the arms licence of the appellant-petitioner, during which period these developments have taken place, it could not lay a foundation for the rejection.

6. No counter affidavit was filed at the stage of the writ petition nor there is any affidavit before this Court, in this appeal, which is pending since last more than three years. There is, thus, nothing on record to contest the submission made by Mr. Bariar as regarding misappreciation of circumstances and the developments that took place during the pendency of the application before the licensing authority.

7. We are satisfied to record that the appellant-petitioner has made out a case for indulgence. Considering that the application in question was filed in 1989 along with other applications obviously the appellant-petitioner can not be charged with suppression of fact because at the stage of filing of the applications, the appellant-petitioner did not



possess any other licence. In so far as the criminal case is concerned, the circumstances have changed and while one has resulted in acquittal, the other has ended in an execution of bond, which period also has passed more than two decades ago.

8. In the circumstances, so noted, we are of the opinion that the licensing authority as well as the appellate authority ought to have decided the claim of the appellant-petitioner in the light of the statutory prescription underlying the Arms Act which entitles any person to hold three licence and in view of the circumstances, discussed above, there was neither any non-disclosure on the part of the appellant-petitioner nor the application could have been rejected on grounds of pending criminal cases.

9. In the result, we set aside the judgment and order of the learned Single Judge passed in passed in C.W.J.C. No. 11092 of 2011, dated 29.07.2015. We also set aside the order passed by the licensing authority in Arms Appeal Case No. 369 of 2007, dated 24.05.2011, together with the order passed by the licensing authority, dated 16.07.2001.

10. The matter is remitted back to the Licensing Authority, i.e., the District Magistrate, Patna, to consider the application afresh and for disposal of the same in accordance with law expeditiously and



preferably within a period of three months, from the date of receipt/production of a copy of this order.

11. The writ petition is **allowed** with the directions, above.

(Jyoti Saran, J)

(Nilu Agrawal, J)

Shamshad/-

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