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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 6488 of 2023

Najrul Islam Mallick
Vs.
The State of West Bengal & Ors.

Mr. Balai Lal Sahoo,
Mr. Sankha Prasad Roy
... for the petitioner

Mr. Amal Kumar Sen, Ld. A.G.P.,
Mr. Lal Mohan Basu,
...for the State

1. Learned counsel for the petitioner contends that the petitioner applied for an arms licence, which was initially rejected on the cryptic observation "Not Recommended" in a report issued by the Superintendent of Police, which was relied on by the District Magistrate, the licensing authority. An appeal was preferred by the petitioner against the same, which was allowed and the matter remanded to the District Magistrate who, upon remand, again repeated a similar exercise by relying on a report issued by the Superintendent of Police. It is argued that in terms of Section 13(2) of the Arms Act, 1959, it is the Officer-in-Charge of the nearest police station who is to author the report on the basis of which the issue of grant

of licence is to be decided. Thus, the District Magistrate in the first place committed an error of law in relying on the report of the Superintendent of Police, which was filed belatedly and was cryptic in nature.

2. When the petitioner preferred an appeal, the appellate authority, also by a cryptic communication, refused to entertain the appeal on the apparent premise that no prayer for condonation of delay was made.
3. It is contended by learned counsel for the petitioner that the petitioner preferred the appeal within thirty days, which is the limitation period as per the prescription of the Arms Rules, 2016 (for short “the 2016 Rules”). It is argued that since the order itself was communicated to the petitioner on August 23, 2022 and the appeal was preferred on September 22, 2022, it is to be deemed that the appeal was filed in time. The explanation that the copy of the order was served on the petitioner belatedly also finds place in the memorandum of appeal filed before the appellate authority. As such, the appellate authority ought to have decided the appeal on merits instead of rejecting the same on the ground of delay.

4. Learned counsel also relies on the first sentence of the appellate authority's order which indicates that the petition was filed by the petitioner on September 22, 2022, whereas the order thereon was passed on May 10, 2022, that is, even prior to the petition, which was technically impossible. It is sought to be argued that the said sentence itself shows the non-advertence of the appellate authority to the facts of the case.
5. Learned counsel appearing for the respondent-authorities contends that the District Magistrate, on the second occasion after remand, obtained an order from the Superintendent of Police. Although the first report was cryptic, in the second report, the Superintendent, upon taking reports from all local authorities, gave a specific view, which was relied on for refusing the licence to the petitioner. Thus, it is argued that there is no legal deficiency in the order refusing the licence to the petitioner.
6. Insofar as the appeal is concerned, it is argued that in terms of the provisions of the law, the petitioner was to make out a ground for condonation of delay which power is undoubtedly vested in the appellate authority.

At best, it is submitted, the matter may be remanded to the appellate authority for reconsideration on the merits of the case if the delay is condoned.

7. Upon hearing learned counsel for the parties, it transpires that the technical error in the first sentence of the appellate authority cannot vitiate the communication/order of the appellate authority as a whole, since evidently the same is a clerical error.
8. However, the ground given by the appellate authority for turning down the petitioner's appeal was that no prayer for condonation of delay was made.
9. The proviso to Section 18(2) of the Arms Act clearly confers the power on the appellate authority, if the appellant satisfies the said authority that he had sufficient cause for not preferring an appeal within the stipulated period, to admit the appeal even after the expiry of the limitation period.
10. In terms of the provisions of the 2016 Rules, the time limit for preferring an appeal under Rule 107 is thirty days from the date of issue of the order and not the date of the communication. However, learned counsel for the petitioner is justified in arguing that since

the order itself was handed over to the petitioner at a belated stage, it cannot be said that the appeal could be filed within thirty days from the date of passing of the same. The order itself was passed on May 10, 2022, whereas the same was communicated to the petitioner on August 23, 2022, that is, much after the expiry of the thirty days stipulated in Rule 107. Hence, sufficient cause for the delay was made out by the petitioner in the memorandum of appeal preferred before the appellate authority itself.

11. This is not a matter pertaining to a civil appeal before a civil court; the appellate authority and its procedures cannot be elevated to the status of a civil court, requiring a detailed application for condonation being separately filed by the petitioner. If sufficient explanation is given in the memorandum of appeal itself, which also contains a factual narrative prior to the grounds, the same would be sufficient, if otherwise acceptable to the appellate authority, for the said authority to rely upon and decide the issue for condonation of delay.

12. In fact, I am sufficiently convinced that sufficient grounds for condonation of delay were shown by the petitioner before the appellate

authority, for which the said authority ought to have condoned the delay and taken up the appeal for hearing on merits.

13. However, since the matter has had a long history, inasmuch as it was previously remanded and again re-adjudicated and reached the appellate stage, instead of relegating the matter back to the appellate authority again, this Court decides to scrutinize the order of the District Magistrate, that is, the order of the first instance instead of relegating the matter back to the appellate authority for a fresh consideration.

14. The order dated May 10, 2022 itself shows that the District Magistrate had called for two reports from the Superintendent of Police. Although the first report was cryptic, as it transpires from the order, merely commenting “Not Recommended”, the District Magistrate sought for a second report, which was also filed by the Superintendent of Police, Purba Bardhaman, by not only making the same comment “Not Recommended”, but also furnishing detailed grounds.

15. A question arises here, which is very pertinent to the issue and raised by the petitioner. The same is whether in view of Section 13(2) of the

1959 Act providing categorically that the Licensing Authority shall call for a report from the Officer-in-Charge of the nearest police station, the report of the Superintendent of Police of the District would suffice.

16. However, it is to be noted that the Superintendent of Police is the superior hierarchical authority over the Officer-in-Charge of the nearest police station. Although without a scrutiny of appropriate report from the local area where the petitioner resides, the Superintendent of Police would be handicapped to form an opinion thereon, in the present case it is found from the order of the District Magistrate that only on perusal of all documents on record, including the report obtained from "Police Authorities" and from internal source, the Superintendent of Police was of the opinion that at present there is no threat perception against the applicant and the local law and order situation under the concerned police station is normal in respective areas and the present situation does not indicate requirement of gun for personal safety and security of the applicant.

17. The reference to a report obtained from Police Authorities clearly indicates that the

Superintendent of Police went one step ahead and took a report from the concerned police station, which sufficiently takes care of Section 13(2) of the 1959 Act and the requirement thereunder to obtain a report from the officer-in-charge of the local police station. In fact, the Superintendent of Police has a bird's eye view of the scenario and, in the present case, obtained a report from the "Police Authorities", meaning thereby the local police, before forming an opinion. The opinion was not based on thin air but on internal sources and the report from the local police, which indicates that there is no threat perception against the applicant and there is no necessity at present to issue an arms licence in favour of the petitioner. Only on the premise of such observations and the report, the District Magistrate refused to issue arms licence in favour of the petitioner, thereby rejecting the petitioner's application for such purpose.

18. As such, I find that the District Magistrate adverted to all the relevant criteria required to be considered in accordance with law and upon a factual assessment of the situation, rightly made an observation that arms licence need not be issued in favour of the petitioner at present.

19. As such, a remand of the matter back either to the appellate authority or the District Magistrate would be a futile exercise and a loss of unnecessary time and resources for both the petitioner and the authorities.
20. Hence, to obviate further delay, it is hereby observed that the District Magistrate was justified in refusing arms licence to the petitioner.
21. It may be added here that since the order of the appellate authority has been challenged in the present writ petition, into which the District Magistrate's order has merged, there is no fetter on this Court to look into the orders of both the authorities while passing the present order.
22. In view of the above observations, W.P.A. No. 6488 of 2023 is dismissed on contest without, however, any order as to costs.
23. The order of the District Magistrate refusing to issue licence to the petitioner is hereby affirmed.
24. It is, however, made clear that none of the above observations shall preclude the petitioner in future from applying afresh for arms licence, if there is a change of circumstances and the situation so demands, in which case, upon due satisfaction in accordance with law and as to

the fact that the situation has changed, the appropriate authority will decide such application duly in accordance with law without being unduly influenced by any of the observations made herein.

25. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)