

Vinod Kumar Vs. the State and ors

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Court : Delhi

Decided On : Sep-09-2013

Judge : V. K. Jain

Appellant : Vinod Kumar

Respondent : The State and ors

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment reserved on :

30. 08.2013 Judgment pronounced on :

09. 09.2013 W.P.(C) 1631/2012 VINOD KUMAR Petitioner Through: Counsel for the petitioner. versus THE STATE & ORS Respondents Through:Mr.Anjum Javed, Advocate for the respondents with Inspector P.S. Naushad. CORAM: HON'BLE MR. JUSTICE V.K. JAIN V.K. JAIN, J.

The only issue involved in this writ petition is as to whether the respondent No.3 was justified in refusing an arm Licence to the petitioner.

2. The petitioner submitted an application dated 11.01.2011 for grant of an arm licence, in order to secure his life, property and business activities. The said application was rejected vide order dated 07.03.2011, on the same ground that the petitioner did not have any specific threat. Being aggrieved from the said decision, the petitioner preferred an appeal before the Lieutenant Governor of Delhi. The

appeal was rejected on the ground that there was no specific threat to the petitioners life or liberty, which would justify the grant of an Arms Licence to him. The Lieutenant Governor also took into consideration the report of Additional DCP-I (North-East District), stating therein that the general law and order situation in his area, including village Tahirpur, where the petitioner resides was normal and need for the arm licence, therefore, did not appear to be genuine. Being aggrieved from the said orders, the petitioner is before this Court, seeking setting aside of the order dated 18.01.2012 and a direction to respondent No. 3 to grant a fire arm licence to him.

3. The grant and refusal of licences for fire arms and ammunition is governed, inter alia, by Sections 13 and 14 of the Arms Act, 1959. To the extent they are relevant, the said Sections read as under: 13. (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 subsection(2), shall, subject to the other provisions of this Chapter, by order in writing either grant the license 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 license under section 3 where the license 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 license 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 recognized by the Central Government ; (b) a license under section 3 in any other case or license under section 4, section 5, section 6, section 10 or section 12, if the licensing authority is satisfied that the person by whom the license is

required has a good reason for obtaining the same.

14. Refusal of licences.- (1) Notwithstanding anything in section 13, the 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.

4. Since the grant of an arm licence is regulated by a statute in certain situations, the statute prohibits grant of such a licence and there is no challenge to the constitutional validity of the Arms Act. No citizen has a fundamental right to obtain a fire arm licence and/or ammunition and, therefore, a fire arm licence cannot be claimed as a matter of right. The citizens are entitled to safeguard their life and liberty taking all such measures as are bound to them in law, but, possession and carrying of a fire arm is a privilege regulated by the provisions of the Arms Act, 1959. Section 13(3)(a) stipulates the cases in which it is obligatory for the Licensing Authority to grant such a licence. The grant of the licence is also mandated in a case where the Licensing Authority is satisfied that the applicant has a good reason to obtain the same. But, the provisions contained in Section 13 being subject to the provisions of Section 14 of the Act, no licence even in a case covered under sub-section (3) of Section 13 can be granted, if a situation contemplated in sub-section (1) of Section 14 exists. In such a case, the Licensing Authority would have no option, but to decline a licence. Section 13(3) contemplates the situations in which it is obligatory for the Licensing Authority to grant licence, whereas Section 14(1) contemplates the situation, existence of which mandates refusal of the licence even if the case of the applicant is covered under sub-section (3) of Section 13 of the Act.

5. On a cumulative and harmonious construction of Section 13 and 14 of the Act, it becomes obvious that, except in the cases covered by Section 13(3)(a), which do not fall under Section 14(1), though the Licensing Authority has a discretion whether to grant licence or not, such a discretion is not absolute nor can it be exercised on subjective considerations. It has to be a decision guided by reasons which are cogent, objective, transparent and logical. The licence can neither be granted nor refused on the whims and fancies of the Licensing Authority and the decision taken by him must necessarily be based on good reasons which are discernible from the order passed by him. The need to become objective, fair and reasonable becomes greater in case the Licensing Authority seeks to refuse the licence since sub-section (3) of Section 14 mandates him to record reasons for such refusal and supply a brief statement of such reasons to the applicant who has a right to challenge the decision of the Licensing Authority, before the prescribed Appellate Authority. An order refusing to grant licence is subject to judicial review if challenged on the ground that it suffers from the vice of arbitrariness, non-application of mind, mala fides or application of irrelevant considerations.

6. The case of the petitioner admittedly is not covered by sub-section (1) of Section 14 since (i) the licence was not sought in respect of any prohibited arm or ammunition; (ii) the petitioner is not a person prohibited by law from having in his possession or carrying any arm or ammunition, (iii) he is not a person of unsound mind and (iv) there is no finding that he is, for any reason, unfit for grant of such a licence. This is also not the case of the Licensing Authority that it is necessary for the security of the public peace or public safety to refuse the fire arm licence to the petitioner.

7. The next question which arises for consideration is as to whether the licence could be refused to the petitioner on the ground that there was no specific threat to his life or property and the law and order situation in the locality in which he was residing was satisfactory. In my opinion, the fire arm licence cannot be denied to a person, in whose case a situation contemplated by sub-section (1) of Section 14 does not exist, solely on the ground that there is no specific threat to him or his family members. A situation requiring safety in the form of a fire arm cannot

always be foreseen and may develop all of a sudden. For instance, there may be an attempted burglary, dacoity, house breaking or robbery in the house of a citizen in the dead of the night or he may be subjected to robbery, snatching, etc, while on the move. It is not possible for a police official to be present everywhere and every time to protect the citizens and in fact it happens quite often that the police arrives at the scene only after the crime is already committed. Though it is an undisputed responsibility of the State to protect the lives and property of the citizens, the harsh reality is that the State does not have an impressive record in this regard. In fact, no person can predict when, where and at what time and in which form, he may face a threat to his life or property. Therefore, as a prudent citizen, he would be justified in taking adequate steps to protect himself and his property and such steps would include acquiring a licensed weapon so as to avoid any crime against his body and property. It is the applicants own perception of threat to his life and property which needs to be considered by the Licensing Authority in the light of law and order situation, prevailing in the locality and various other factors.

8. During the course of arguments, the learned counsel for the respondents referred to the Standing Orders, issued by the Government in the matter of issue of arms licences. I have perused the said Standing Order. This is not a requirement under these guidelines that the applicant must necessarily have a specific threat to his life or liberty before an arms licence can be granted to him, the primary requirement being that the need for grant of such a licence should be genuine. This need, as discussed earlier, needs to be considered from the point of view of the applicant and not of the Licensing Authority.

9. In *Abdul Kafi v. District Magistrate, Allahabad and Another* 2003 ALL L. J.

1959, the Licensing Authority refused licence on the ground that the applicant had not mentioned the necessity and justification for fire arm in his application nor had he stated as to who were the persons from whom he had apprehension to his life and liberty. It was held that refusal of licence on such a ground was not justified. In *Syed Afzal Mehdi vs. The State of A.P.*, 2010(4) ALT 377. the application for grant of licence was refused on the ground that there was no genuine need to grant such a licence to the petitioner. In that case, the petitioner had sought a licence to

protect his own life and liberty. Rejection of the licence on such a ground was held to be unsustainable in law. In *Dinesh Kumar Pandey v. State of U.P. and Ors.* 2013(1) ALJ 449. Allahabad High Court held that a person could not be refused licence on the ground that neither he nor any of his family members or his property had been subjected to serious crime.

10. For the reasons stated hereinabove, the impugned order dated 18.01.2012 is hereby quashed and the respondents are directed to grant an appropriate licence to the petitioner unless there exists a situation contemplated by Section 14(1) of the Arms Act which would mandate refusal of a licence to him. An appropriate order in terms of this direction be passed by the Licensing Authority, within eight weeks from today. The writ petition stands disposed of. No order as to costs.
V.K.JAIN, J SEPTEMBER 09 2013 bg

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