

Parveen Kumar Beniwal Vs. Govt. of Nct of Delhi and Anr

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Court : Delhi

Decided On : Dec-22-2014

Judge : Vibhu Bakhru

Appellant : Parveen Kumar Beniwal

Respondent : Govt. of Nct of Delhi and Anr

Judgement :

THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment delivered on:

22. 12.2014 W.P.(C) 8111/2014 PARVEEN KUMAR BENIWAL Petitioner versus GOVT. OF NCT OF DELHI & ANR Respondents Advocates who appeared in this case: For the Petitioner : Mr Sunil K. Mittal, Mr Kshitij Mittal and Mr Anshul Mittal. For the Respondents : Ms Zubeda Begum, St. Counsel (GNCTD) and Ms Sana Ansari for respondent. Mr Anjum Javed and Mr Devendra Kumar for respondent no.2. CORAM:HONBLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J1 The petitioner impugns an order dated 06.08.2014 (hereafter the impugned order) passed by the Lt. Governor of Delhi whereby the petitioners appeal under Section 18 of the Arms Act, 1959 (hereafter the Act) was rejected. The said appeal was preferred against an order dated 01.04.2014 passed by the Additional Commissioner of Police (Licensing) revoking the petitioners arms license.

2. The petitioners arms license was revoked by the Additional Commissioner of Police (Licensing) as the petitioner had suppressed his involvement in a criminal case while applying for renewal of his license. And, as the said Licensing Authority was of the view that the petitioner had the propensity to indulge in quarrel with others.

3. The controversy to be addressed is whether the decision of the Licensing Authority to cancel the petitioners arms license was arbitrary, unreasonable or contrary to the provisions of the Act.

4. Briefly stated the relevant facts necessary for considering the present controversy are as under:

4.1 The petitioner was granted an arms license (bearing No.NWSV/4/2006/66) for a .32 Bore Pistol. The said license expired on 30.04.2012 and the petitioner applied for its renewal on 17.08.2012. The application required the petitioner to answer the question - Whether presently/previously involved in any criminal case, (whether convicted/acquitted or pending trial). If yes details of the case. Against the said query, the petitioner had filled in his response as N/A. The renewal application of the petitioner was accepted and his arms license was renewed till 30.04.2015.

4.2 Subsequently, the Licensing Authority received information from DCP/North-West District that the petitioner was involved in the two cases, namely: (1) FIR No.409/2010 dated 27.12.2010 under Section 302/34 of Indian Penal Code (IPC) with Police Station K. N. Katju Marg, New Delhi; and (2) FIR No.280/13 dated 24.08.2013 registered under Section 323/341/336/506/34 of IPC with Police Station Rani Bagh, New Delhi.

4.3 The Licensing Authority issued an Order-Cum-Show Cause Notice dated 31.10.2013 suspending the petitioners arms license and calling upon the petitioner as to why the said license should not be cancelled.

4.4 The petitioner, by its letter dated 08.11.2013, replied to the said show cause notice and submitted that the petitioner was acquitted by the Court of Sh. Sanjeev Kumar, ASJ on 08.08.2012 in FIR No.409/2010 and neither the weapon was used nor seized in the aforesaid case. With respect to FIR No.280/13, the petitioner submitted that the complainant in the said case had filed an affidavit that no firing incident took place.

4.5 The Licencing Authority, by an order dated 01.04.2014, revoked/cancelled the petitioners arms licence. The Lt. Governor of Delhi by the

impugned order confirmed the order passed by the Licencing Authority as a fair order.

5. Mr Sunil Mittal, the learned counsel appearing for the petitioner contended that the decision of the licensing authority was ex facie, untenable as the petitioner had been acquitted in the case relating to FIR No.409/10 and further the second FIR i.e. FIR No.280/13 had been quashed. He emphasized that there was no finding that the weapon in question had been used in any of the said incidents which were alleged in the FIRs. It was contended that an arms license could not be revoked on the basis of a complaint, which did not include an allegation that the weapon had been used. He referred to a decision of the Division Bench of this Court in *Sheru v. Deputy Commissioner of Police (Licensing) Delhi*:

50. (1993) DLT390 in support of his contention.

6. The learned counsel appearing for the respondent contended that the right to bear arms was not a fundamental right but a privilege accorded under the Act and, therefore, could be revoked in terms of the Act. He referred to the judgment of the Full Bench of the Patna High Court in *Kapildeo Singh v. State of Bihar*: AIR1987 Patna 122 in support of his contention that the right to carry arms was not a fundamental right under the Constitution of India. The learned counsel submitted that the petitioner was involved in 2 FIRs within a span of three years. In FIR No.409/10, the petitioner had been acquitted by granting him the benefit of doubt as the Court had found that the investigations conducted by the police were faulty. Further, he pointed out, that FIR No.280/13 had been quashed as the petitioner and the complainant had settled the matter. It was contended that although the said criminal cases did not result in petitioners conviction, the same could be considered for forming an opinion as to whether the petitioner was a fit person to be granted an arms license.

7. It was next contended that the petitioner had failed to disclose his involvement in the FIR No.409/10 and this was sufficient ground for revoking his arms license.

8. He further relied upon the decision of the Supreme Court in *Chandrakant Hargovindas Shah v. Deputy Commissioner of Police*: (2009) 7 SCC186 to contend

that the arms license could be revoked if the applicant was found to have suppressed material information.

9. Before proceeding any further it would be necessary to refer to Clauses (a), (b) and (c) of Section 17(3) of the Act, which read as under:

3. The licensing authority may by order in writing suspend a license for such period as it thinks fit or revoke a licence- 10. (a) if the licensing authority is satisfied that the holder of the licence is 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 is of unsound mind, or is for any reason unfit for a licence under this Act; or (b) if the licensing authority deems it necessary for the security of the public peace or for public safety to suspend or revoke the licence; or (c) if the licence was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the licence or any other person on his behalf at the time of applying for it.

Plainly, the licensing authority is vested with the discretion to revoke a license under Clause (b) of Section 17(3) of the Act. And, this discretion has to be guided by the consideration of security of public peace and public safety. In the present case, the licensing authority has examined the circumstances and has come to a conclusion that the petitioner is not a fit person to hold arms license in the interest of public safety at large. The question to be addressed is whether this opinion is arbitrary or unreasonable and falls foul of Article 14 of the Constitution of India.

11. It is apparent from the order passed by the licensing authority that the factors that weighed with the authority were the involvement of the petitioner in two criminal cases and the failure on the part of the petitioner to make a true and fair disclosure in his application form. The learned counsel for the petitioner has argued at length that no adverse decision could be taken on the basis of the said FIRs since the petitioner had been acquitted in one FIR (No.409/10) and the other FIR had been quashed. In my view, this contention cannot be accepted. The issue is not whether the petitioner is guilty of the offences alleged but whether a reasonable person could infer that the petitioner was involved in those incidents. The standard of proof required for conviction in a criminal proceeding is very high

and it must be proved that the accused is guilty of an offence beyond reasonable doubt. This is materially different from the consideration that the licensing authority has to bear while forming an opinion, whether to revoke a license. It is not necessary that an accused be convicted of an offense, for a licensing authority to take note of the possible involvement of the applicant/license holder in that offence. All that is required to be considered is whether the FIR could be considered to lead to an inference that the accused was involved in the incidents. In this case, the licensing authority has examined the FIRs and found that in one FIR the petitioner had been acquitted by granting him the benefit of doubt and the other FIR had been quashed as the petitioner had settled the disputes with the complainant. In both the cases, the offences were of serious nature and irrespective of whether the petitioner was convicted or not for the offences alleged in the FIRs, it cannot be disputed that the FIRs were material for the purposes of considering whether petitioner should be permitted to carry arms. It is not possible to hold that FIRs were extraneous material for forming an opinion under Section 17(3) of the Act.

12. It is settled law that this Court while exercising powers under Article 226 of the Constitution of India would not supplant its opinion over that of concerned authority. It is also well settled that there is no inherent right to carry or hold firearms; the said right cannot be read in either Article 21 or 19 of the Constitution of India. Thus, a persons right for an arms licence is circumscribed by the provisions of the Act, which grants a wide discretion to the licensing authority to determine whether a person is unfit for a licence. No interference with exercise of this discretion under Article 226 of the Constitution of India would be warranted unless it is found that the decision of the concerned authority is arbitrary, capricious, unreasonable or for extraneous considerations or the decision making process is faulted. And, the decision of the concerned authority would not be held as unreasonable unless the Court comes to a conclusion that no reasonable person could have, in the given facts, taken such a decision. Clearly, in the present case, the opinion that the petitioner has propensity to be involved in quarrels cannot be stated to be unreasonable or without any material.

13. It is also established that the application for renewal submitted by the petitioner also contained incorrect facts. Row No.15 of the application form required the petitioner to disclose, whether he was presently or previously involved in any criminal case; it was clearly indicated that the petitioner was also required to disclose whether the petitioner was convicted, acquitted or whether the criminal case was pending trial. The response of the petitioner that the said clause was not applicable was, undoubtedly, a false statement. The contention that the petitioner was not required to disclose the same as he had been acquitted cannot be accepted, as the application form clearly required to the petitioner to disclose his involvement in previous cases and also indicate whether he was acquitted or convicted. Thus, the licensing authority's finding that the application contained material falsehood cannot be faulted. The decision to revoke the license is sustainable on this ground alone.

14. The petitioner relied upon the following observations of Jaspal Singh J, in Sheru (supra) in support of his contention that an arms license could not be revoked merely on the basis of a criminal case:

Anyhow, although the pendency of a minor or capital crime case may possibly lead to an action under Clause (a) of Subsection (3) of Section 17 on the ground that such a person is unfit for a licence under this Act more so where the licensed weapon is used or employed in the alleged crime, the pendency of one single criminal case of the nature as in the present case where admittedly no firearm was used and only simple hurt was allegedly caused cannot attract Clause (b) of Subsection (3) of Section 17. For that reason also the Order Cum Show Cause Notice cannot be sustained.

15. In my view, the aforementioned observations of Jaspal Singh J, in Sheru (supra) cannot be read as an authority for a proposition that an arms license cannot be revoked on the basis of the license holders involvement in criminal cases, if it is not alleged that the licensed weapon was used. In that case, the allegation was that one Shakruddin had been beaten up by two persons (Shri Fazloo and Saeed). Shakruddin escaped and entered into the house of the Ex-Pardhan and in the meantime, supporters of Fazloo and Saeed gathered and

started pelting stones. The petitioner therein Sheru, was one of those accused. Clearly, the case made out against Sheru was not of a serious crime and he was not a prime accused. Contrary to this, the allegations made against the petitioner in FIR No.409/2010 were substantially more serious. Further, the petitioner is alleged to be involved in yet another incident subsequently i.e. FIR No.280/2013. It would be incorrect to read the decision in Sheru (supra) as indicting that the use of a licenced weapon in a criminal case is essential for it to be considered by the licensing authority in forming its opinion whether a person is unfit for an arms license. The observations made by this court also cannot be read to mean that a persons involvement in a criminal case of simple hurt has to be ignored by a licensing authority.

16. The petitioner also relied on the decision of the Allahabad High Court in Govind Singh v. State of UP And Others: W.C.No.22659 of 2006 decided on 05.07.2010 whereby the Court held as under:

Since the facts of the case are not disputed and legal position being settled that mere involvement in the criminal case cannot be a ground for cancellation of the fire arm licence as in the present case, the petitioner is not involved in any criminal case even the Appellate Court has committed an error of law in dismissing the appeal preferred by the petitioner against the order of the licensing authority.

17. Most respectfully, I am unable to concur with the aforesaid view. As I see it, no straight jacket formula can be applied and each case would have to be evaluated on its own facts by the licensing authority. In given facts, allegation of an involvement in serious criminal cases could afford the licensing authority reasons to conclude that the license holder is not fit to hold an arms license.

18. A full Bench of the Patna High Court in Kapildeo Singh (supra), considered the question whether the pendency of the criminal case would warrant revocation of a license and held as under:

8. In the light of the aforesaid provisions the primal contention of Mr. Mishra for the petitioner was that in the aforequoted Section 17 there is no provision or mandate that the pendency of a serious criminal case would warrant the revocation of a

licence. Counsel, therefore, submitted that the mere registration of a criminal case or its continued pendency was no ground for the extreme step of revoking the licence.

9. Now it is true that sub-section (3) does not in terms provide that the pendency of a criminal charge is a ground for the revocation of licence. However, it is equally true that it is not possible for the legislature to conceive every situation in the future which may render the suspension or revocation of a licence granted earlier necessary. It is, therefore, that the residuary discretion is left in the licensing authority. On this score, the language employed is again of the widest amplitude. Clause (a) warrants revocation if the licensing authority is satisfied that the holder of the licence is for any reason unfit for the licence under the Act.

I respectfully, concur with the aforesaid view expressed by the Patna High Court.

19. In view of the above, I find no grounds to interfere with the impugned order. Accordingly, the petition is dismissed. No order as to costs. VIBHU BAKHRU, J
DECEMBER22 2014 MK/RK

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