

Braham Parkash Vs. State and anr.

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Court : Delhi

Decided On : Jan-21-1994

Reported in : 1994IAD(Delhi)489; 53(1994)DLT454; 1994(28)DRJ353

Judge : Y.K. Sabharwal and; R.L. Gupta, JJ.

Acts : [Arms Act, 1959](#) - Sections 17

Appeal No. : Criminal Writ Appeal No. 387 of 1992

Appellant : Braham Parkash

Respondent : State and anr.

Advocate for Pet/Ap. : R.N. Mittal,; Naveen Goel,; Sunil Gupta and;

Judgement :

Y.K. Sabharwal, J.

(1) The challenge in this writ petition is to the legality of the order dated 26th February 1993 passed by the Deputy Commissioner of Police-Licensing (hereinafter referred as 'the Licensing Authority') under section 17(3) 0, the [Arms Act, 1959](#) directing the cancellation of the Arms license to the petitioner.

(2) The petitioner was issued an all India Arms license by S.D.M., Hansi(Haryana) sometime in the year 1989. The petitioner applied on 22nd December, 1989 for

the registration of the said license with the Licensing Authority, Delhi, claiming that he has shifted his residence from Hansi to Delhi. The license was registered in Delhi and by letter dated 4th January, 1990 post verification reports were called from Superintendent Police and District Magistrate, Hissar and also from the Deputy Commissioner of Police, South District, Delhi. The Superintendent of Police, Hissar, reported on 13th February 1990 that the petitioner was not living at Hissar. No reply seems to have been received from District Magistrate, Hissar in spite of issue of various reminders. The Deputy Commissioner of Police, South District, Delhi, by communication dated 1st February 1990 addressed to the Licensing Authority reported that nothing adverse had come to the notice against the petitioner in the record of the concerned Police Station and that he was residing at the given address at Tughlakabad for the last 25 years. The Deputy Commissioner of Police, South District, however, by a communication dated 30th January 1992 addressed to the Licensing authority stated that on checking of records in Police Station it was found that the petitioner was involved in six cases as follows:-

i) FIR No.226 dated 20.9.85 u/s 147/148/149/452 Indian Penal Code Police Station Badar Pur, New Delhi. ii) Fir No.34, dated 31.1.91 u/s 325/34 Indian Penal Code Police Station Okhla Industrial Area, New Delhi. iii. Fir No.267 dated 11.9.91 u/s 324/34 Indian Penal Code Police Station Okhla Industrial Area, New Delhi. iv. Fir No.285 dated 23.9.91 u/s 307/324/34 Indian Penal Code Police Station Okhla Industrial Area, New Delhi. v. Preventive Action. Two separate proceedings u/s 107/150 Criminal Procedure Code . are pending in the Court of SDM/South Distt., New Delhi.

(3) On receipt of this communication a note was put up on 31st January/1st February 1992 to the licensing authority seeking orders for suspension and cancellation of the arms license. The order cum show cause notice dated 6th March, 1992 was issued to the petitioner which reads as under:-

'WHEREAS, Shri Brahm Parkash s/o Sh. Chander Pal r/o 370-A, Village, Tughlakabad, New Delhi, is holding an arms license No.167- V/89/Hansi for one .32 bore Revolver & one .315 Rifle issued by SDM/ Hansi(Haryana) valid up to

8.5.1992.

2. And Whereas, Shri Braham Parkash applied in this office on 22.12.89 for the registration of above said arms license due to change of his residence from Hansi to Delhi. His arms license was registered in this office vide registration No.SWDC-0500272 and post issue verification report have been called for from DM/Hissar, SP/Hissar and DCP/ South Distt.N.Delhi, SP/Hissar has intimated that he never resided at the given address in Hansi. DCP/South Distt, has intimated that he is residing in Delhi for the last 25 years and is also found involved in the following cases:

1. Fir No.226/85 u/s 147/148/149/452 Indian Penal Code Ps Badarpur.
2. Fir No.34/91 u/s 325/34 Indian Penal Code Ps Okhla Industrial Area.
- 3.FIRNo.267/91 u/s 324/34 Indian Penal Code Ps Okhla Industrial Area.
4. Fir No.285/91 u/s 307/324/34 Indian Penal Code Ps Okhla Industrial Area.
5. Two separate proceedings u/s 107/150 Criminal Procedure Code . are pending in the court of SEM/South District.

3. And Whereas, the above act of Shri Braham Parkash renders him unfit to hold an arms license under Section 17(3) of Arms Act, 1959 in the interest of public safety and peace.

4. Now, thereforee, I Kanwaljit Deol, Deputy Commissioner of Police, Licensing, Delhi, by virtue of powers conferred upon me under section 17(3) of the Arms Act, 1959 do hereby suspend his arms license with immediate effect. He is directed to deposit his weapon Along with its cartridges, if any, in the nearest Police Station under intimation to this office and his arms license in this office. He is also called upon to show cause as to why his anus license should not be cancelled for the reasons mentioned above. His reply to show cause notice should reach this office within 15 days from the dale of receipt of this notice, failing which, it will be presumed that he has nothing to say in his defense and matter will be decided ex-parte on merits of the case.'

(4) By his reply dated 8th April, 1992 the petitioner, inter-alia, explained that he had resided at Hansi from January 1989 to December, 1989. The address at Hansi was given in the reply. In regard to criminal cases the petitioner stated that the case FIR No. 226/85 was falsely made against him and he had been discharged by the Metropolitan Magistrate on 6th December, 1986. A copy of the judgment dated 6th December, 1986 was enclosed with the reply. Regarding other cases the petitioner took the stand that the said cases had been registered against him because some goondas, namely, Mange Ram etc and Balwant Singh, in charge, Police Post Sangam Vihar of Ps Okhla Industrial Area had tried to illegally possess his plot measuring 250sq.yds and he had made a complaint against Balwant Singh to higher Police officers and the said complaint was enquired into by the Vigilance Department and Balwant Singh had been transferred. It was emphasised that all those cases were falsely made against the petitioner between January 1991 and September, 1991.

(5) On receipt of the aforesaid reply from the petitioner the licensing authority by communication dated 29th April, 1992 requested the Superintendent of Police, Hansi (Haryana) that the period of stay of petitioner at the given address in Hansi maybe verified and the information supplied to the licensing authority. The Deputy Commissioner of Police, South District, was also requested to send his comments on the reply submitted by the petitioner to the order-cum-show cause notice dated 6th March, 1992. The Superintendent of Police after getting the matter verified reported that the petitioner had been living at the given address as a tenant for a period of one year and thereafter he had shifted to Delhi.

(6) The present petition was filed on 22nd July, 1992 challenging the validity of the order cum show cause notice dated 6th March, 1992. This court directed that notice be issued to the respondent to show cause why rule nisi be not issued. The notice was returnable for 31st July 1992. The Deputy Commissioner of Police, South District, while sending his comments of the writ petition to the licensing authority also referred to the letter of the Licensing authority dated 29th April, 1992 whereby the comments had been sought on the reply of the petitioner which he submitted to the order-cum-show cause notice. The Deputy Commissioner of Police, South District, inter-alia, stated that the petitioner had obtained the arms

license from Haryana whereas he is residing in Delhi since birth and he had managed to obtain the license from Haryana on fictitious grounds and managed the same endorsed at Delhi.

(7) The order cum show cause notice dated 6th March, 1992 was confirmed by the impugned order made by the licensing authority on 26th February 1993 and the arms license in question was directed to be cancelled. The petitioner has amended the writ petition and prays for quashing the impugned order. The petitioner also seeks issue of directions to the respondent for renewal of the arms license.

(8) The operative portion of the impugned order reads as under:-

'ANDWHEREAS, I have carefully gone through the material available on record, reply submitted by the applicant and his personal submissions. The report of Sp, Hissar points out that he resided in Hansi during 1989 while the license submits at the time of hearing that he was in Hansi in 1991. license is of 1989. This coupled with earlier report that he never resided there, leads to the conclusion that the fresh report cannot be relied upon. Local police has also stated that he has resided permanently, since birth in Tughlakabad. As for the applicant's reply to his criminal record, his only Explanationn is that he has been involved because of enimity. Local police comments are clear and show him to be a person unfit to hold a license. That is why he did not seek a license from Delhi, where he has resided since birth and sought it instead from Hansi, where no record exists. thereforee, taking all the circumstances into view I do not find him fit to hold an arms license.'

(9) Mr. Mittal, learned counsel for the petitioner has urged various contentions but it is not necessary to consider all the contentions except the two. The first contention is that it is a case of total non application of mind by the licencing authority. The second contention is the denial of principles of natural justice to the petitioner which it is urged is writ large on the face of the record.

(10) The impugned order shows that the licencing authority was of the opinion that the petitioner had sought the license from Hansi by concealing the fact of his

criminal record from the S.D.M., Hansi and for the same reason, namely, the criminal record, he did not seek a license from Delhi where he has been residing since birth. The petitioner had been issued license by the Licensing Authority at Hansi in the year 1989. It is clear from the material on record that the petitioner had no criminal record at that point of time. The only case registered against the petitioner prior to 1989 was pertaining to Fir 226 dated 29th May, 1985 Ps Badarpur, New Delhi. By the order on charge dated 6th December, 1986 passed by learned Metropolitan Magistrate, New Delhi, the petitioner was discharged and the learned Magistrate had held that on the face of it a false and fabricated case had been concocted to drag the accused person in court by implicating them in a false case. The learned Magistrate held that the story of the prosecution being false and fabricated all the accused were discharged. In view of that order the question of the petitioner managing to obtain license from Sdm, Hansi, by concealing the facts of his involvement in criminal cases in Delhi does not arise as admittedly all other cases are of subsequent period, namely, 1991. From the impugned order as well as the counter affidavit it appears that the licensing authority was labouring under the impression that the petitioner was discharged on 6th December, 1989 while the order of discharge in fact was made on 6th December, 1986. Even in the counter affidavit the licensing authority has, inter-alia, deposed that 'as regards, issuing of arms license by SDM(Hansi) and purchasing weapon thereby, the petitioner has managed this arms license issued from SDM/Hansi by giving false address of Hansi and concealing the facts of his involvement in criminal cases in Delhi. Moreover, he got his arms license registered in Delhi on 22nd December, 1989 by concealing the facts of his involvement in criminal cases in which he was discharged only on 6th December, 1989.' This demonstrates a total non application of mind. On 6th December, 1986 the case against the petitioner had been held to be false and fabricated and as such there could be no question of any concealment either from the authorities at Hansi or from the licensing authority, Delhi, when the arms license was registered in Delhi. The show cause notice and the impugned order do not proceed on the basis that because of alleged involvement of the petitioner in criminal cases in the year 1991, he had become unfit to hold the license. The petitioner has been able to make good his first contention.

(11) In the report dated 13th February 1990 the Superintendent of Police, Hansi, did not state that the petitioner had not resided in Hansi in the year 1989. That report only conveys that at the time of enquiry in 1990 the petitioner was not residing at Hansi. When a specific report was sought after the petitioner had given information regarding his address at Hansi the Superintendent of Police, Hissar, by his report dated 2nd July 1992 reported that the petitioner had lived at the given address in Hansi for a period of one year as a tenant. The Deputy Commissioner of Police, South District, did not give specific report on the question of the residence of the petitioner at Hansi in the year 1989 but while sending his comments to Licensing authority, he stated that the petitioner was residing in his Village Tughlakabad since birth. Neither the report of the Superintendent of Police, Hissar, was ever sent to Deputy Commissioner of Police, South District, nor his report or comments sought on the information supplied by Superintendent of Police, Hissar. The petitioner was not supplied with any of the reports. The recital in the impugned order that the licensee submitted at the time of hearing that he was in Hansi in 1991, does not make any sense whatsoever. The case of the petitioner has always been that he resided in Hansi during the year 1989 when the license was granted to him. No cogent reasons have been given for not relying upon the report of Superintendent of Police, Hissar, that the petitioner had resided in Hansi in the year 1989. Further in case the licensing authority was to rely upon on the so called report of Deputy Commissioner of Police, South District, for coming to the conclusion that the petitioner did not reside in Hansi in the year 1989 the petitioner ought to have been taken into confidence and informed of the said report and the reason for not relying upon the report of Superintendent of Police, Hissar and his Explanationn obtained. Nothing of the kind was done and the violation of principles of natural justice is, therefore, writ large on the record and thus the second contention of the petitioner also deserves to be accepted.

(12) We may mention another aspect. The record shows that the licensing authority was labouring under an impression that in the first report of Deputy Commissioner of Police, South District, dated 1st February 1990 the fact of involvement of the petitioner in criminal cases had been concealed. By communication dated 6th March, 1992 issued by the Licensing authority, the Deputy Commissioner of Police, South District, was asked to clarify' the

circumstances under which a nil report regarding the involvement of the petitioner in criminal cases was sent on 1st February 1990. As already noticed, the petitioner was not involved in any case when the report dated 1st February 1990 was sent except the case of the year 1985 which had been held by a court of competent jurisdiction by order dated 6th December, 1986 to be false and fabricated. This again demonstrates a total non application of mind of the licensing authority.

(13) For the reasons aforesaid the rule is made absolute and the impugned show cause notice and the impugned order of Licensing authority dated 26th February 1993 are quashed and the respondents are directed to consider the application of the petitioner for renewal of license in accordance with law. The petitioner would also be entitled to costs which we quantify at Rs.2,000.00 .

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