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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 1605/2014

SHIV NARAYAN

..... Petitioner

Through: Mr. Vishesh Wadhwa, Advocate with
Ms. Vasundhara Nagrath, Advocate.

versus

ADDL. COMMISSIONER
OF POLICE (LICENSING)

..... Respondent

Through: Ms. Zubeda Begum, Advocate.

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Date of Decision : 11th March, 2014

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

CM Appl. 3350/2014 (exemption) in W.P.(C) 1605/2014

Allowed, subject to just exceptions.

Accordingly, present application stands disposed of.

W.P.(C) 1605/2014

1. Present writ petition has been filed challenging the show cause notice dated 18th June, 2013 as well as the order dated 24th October, 2013 passed by the Additional Commissioner of Police whereby the petitioner's arms Licence was cancelled and order dated 28th January, 2014 passed by the Lieutenant Governor whereby petitioner's appeal was dismissed.

2. The facts of the present case are that on 05th May, 1997, petitioner was issued arms Licence for two weapons, i.e., .32 Revolver and .12 Bore Gun.

3. On 18th May, 2013, during marriage function of daughter of petitioner's sister-in-law, there was a firing from the petitioner's Revolver as a result of which, the petitioner and his cousin-Mr. Ramphal were injured.

4. After giving a show cause notice, the Additional Commissioner of Police cancelled the petitioner's arms Licence vide order dated 24th October, 2013. The relevant portion of the aforesaid order is reproduced hereinbelow:-

“ You have submitted your reply dated 26.6.2013. You were also called for personal hearing on 02.9.2013. During hearing, you have admitted that a marriage function of your wife's sister's daughter was held at Seven Seas Banquet Hall, Lawrence Road, Delhi, while you took out your revolver and in an accidental firing, two persons including you were injured. For the said incident a case FIR No.150/2013 dated 19.5.2013 u/s 337 IPC and 27/25(54)/59 Arms Act-1959, PS Keshav Puram, Delhi had been registered against you and the same is pending trial. The report of SHO/Keshav Puram and facts of the incident clearly show that you being licensee acted in a very negligent manner and caused injury to him and another person. Your negligence with fire arm could have resulted in a major mis-happening. In view of these facts it appears that you are not a suitable person to handle an arms license, in the interest of public safety at large.”

(emphasis supplied)

5. Even the appeal challenging the order of Additional Commissioner of Police was dismissed by the Lieutenant Governor vide order dated 29th January, 2014.

6. Learned counsel for petitioner contends that the firing on 18th May,

2013 was an accidental one. He points out that between 1997 and 2013, petitioner was not involved in any incident of firing. He submits that because of an accidental fire, petitioner's licence cannot be revoked. In support of his submissions, learned counsel for petitioner relies upon the following judgments:-

A) *Satish Singh vs. District Magistrate, Sultanpur and Ors., 2009 (31) Criminal CC 528*, wherein it has been held as under:-

“6. A plain reading of section 17 indicates that the arms licence can be cancelled or suspended on the ground that the licensing authority deems it necessary for security of the public peace or the public safety. In the present case, while passing the impugned order, neither the District Magistrate nor the appellate authority has recorded the finding as to how and under what circumstances, the possession of arms licence by the petitioner, is detrimental to the public peace or the public security and safety. Merely because criminal case is pending more so, based on an accidental firing resulting in accidental death of a person, does not seem to attract the provisions of section 17 of the Arms Act. To attract the provisions of section 17 of the Arms Act with regard to public peace, security and safety, it shall always be incumbent on the authorities to record a finding that how, under what circumstances and what manner, the possession of arms licence shall be detrimental to public peace, safety and security. In absence of such finding merely on the ground that a criminal case is pending without any mitigating circumstances with regard to endanger of public peace, safety and security, the provisions contained under section 17 of the Arms Act, shall not satisfy.”

B) *K.S. Abdulla, vs. District Collector and Others, AIR 1972 Kerala 202*, wherein it has been held as under:-

“3. That takes me to the larger question agitated in this writ petition namely, that even in refusing an application for a

licence on the ground that it was not in the interests of the public, or public safety to grant one, the licensing authority was bound to observe the principles of natural justice and to afford an opportunity to the petitioner to make his representations before he was denied the licence sought for on grounds which appeared to the licensing authority to render him unfit for the grant. The relevant statutory provisions in so far as they are material read thus:--

"14. (1) Notwithstanding anything in Section 13, the licensing authority shall refuse to grant--

(a) x x x x

(b) a licence in any other case under Chapter II,--

(i) x x x x

(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.

(2) x x x x

(3) Where the licensing authority refuses to grant a licence to any person it shall record in writing the reasons for such refusal and furnish to that person on demand a brief statement of the same unless in any case the licensing authority is of the opinion that it will not be in the public interest to furnish such statement".

The section itself does not expressly enjoin notice of the application or the affording of any opportunity before the refusal of the licence. But these were sought to be implied on the ground that the licensing authority had to function quasi-judicially, which therefore, brought in these requirements as part of the rules of natural justice. My attention was drawn to a series of cases, where in connection with applications for renewal of a licence or for cancellation of a licence, it had been held that the requirement of notice and the affording of reasonable opportunity were necessary. These cases may

perhaps be distinguishable on the ground that a person who has obtained a licence may well claim to have a right of property and that the refusal of renewal of the same, or cancellation of the licence may well involve a violation of his fundamental right of property. It is doubtful whether the same can be said in respect of one who had not actually obtained a licence in respect of a gun, but is only an applicant for the same. Again, it is a debatable question as to whether, in dealing with application for licence in respect of a dangerous weapon such as a gun, it should be insisted that the ground on which it is thought necessary to withhold the licence in the interests of public peace, or public safety should be disclosed to the applicant before the orders refusing the licence are passed. The information available, the conclusion arrived at, and the grounds on which the same are rested might well be matters which cannot possibly be disclosed, lest sources of information themselves should dry up and the disclosure should provoke reactions against the informants, It may be too, that in matters such as these, private rights may well have to yield to public interests. Whatever be the correct position, I do not propose to venture a final and concluded opinion on these aspects, without fuller arguments. The matter can safely be disposed of on the shorter and narrower ground of non-compliance with the provisions of the Act.”

C) *Ganesh Chandra Bhatt vs. District Magistrate, Almora and Others, AIR 1993 Allahabad 291* wherein it has been held as under:-

“67. Hence, in my opinion, even in cases of involvement in heinous crimes (like Section 302 or 396, I.P.C.) the authorities should examine the full facts, and not straightway and mechanically refuse, suspend or cancel the licence. The authorities must see all the relevant circumstances, including the fact whether refusing/suspending/cancelling the licence would endanger the life of the person, particularly in cases of party-bandi.

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75. The most important difference between the 1959 Act and the 1878 Act, to my mind, is that the former makes a distinction between prohibited arms and non-prohibited arms, while in the latter there is no such distinction. In my opinion the correct interpretation of the Arms Act, 1959 is that under its provisions an application for a prohibited arms is not to be ordinarily allowed, whereas an application for a non-prohibited arm is ordinarily to be allowed. Such an interpretation will be in consonance with the Statement of Objects and Reasons, as well as the prevailing social conditions. Hence the word 'unfit' in S. 14 must be interpreted to mean that the applicant for some exceptional and strong reason has disqualified himself from holding a licence e.g. If he is a hardened criminal or is involved in heinous crimes, otherwise all applications for licences for non-prohibited arms must be allowed."

7. In the opinion of this Court, the Additional Commissioner of Police in the present case has cancelled the arms Licence after giving a proper show cause notice and after recording a finding that petitioner had acted in a negligent manner causing injury not only to himself, but to another person. The Additional Commissioner of Police has also given a categorical finding that not only the petitioner was negligent with his firearm, but he was also not a suitable person to handle an arms Licence in the interest of public safety at large. This Court is of the view that the said findings of fact cannot be interfered with in a writ jurisdiction.

8. The petitioner's contention that the incident on 18th May, 2013 was an accident, cannot be accepted in view the aforesaid categorical findings of the Additional Commissioner of Police. In any event, as the matter is still under investigation, the petitioner's version of events cannot be accepted.

9. Consequently, the judgment of *Satish Singh vs. District Magistrate* (supra) which proceeds on an accidental firing is inapplicable to the facts of the present case. Moreover, the judgment of the Kerala High Court in *K.S. Abdulla vs. District Collector* (supra) is also clearly inapplicable as in the present case the principles of natural justice have been followed and a reasoned order has been passed by the Additional Commissioner of Police. The judgment in *Ganesh Chandra Bhatt vs. District Magistrate* (supra) also offers no assistance to the petitioner in view of the categorical finding by the Additional Commissioner of Police that the petitioner had been negligent in handling his firearm.

10. In fact, the Full Bench of Patna High Court in *Kapildeo Singh Vs. State of Bihar and Others, AIR 1987 Patna 122* has held that “*In our Constitution and jurisprudence there is no fundamental right to bear arms unlike the Second Amendment to the American Constitution.*” It further held that “*the registration and pendency of a criminal case for a major or capital offence may for adequate reasons justify the suspension or revocation of a licence under Cl.(a) of sub-sec. (3) of S. 17 of the Act.*” This Court is also of the opinion that the ‘precautionary principle’ must be followed and public safety cannot be put in jeopardy by granting an arms licence to the petitioner at this stage.

With the aforesaid observations, present petition is dismissed.

MANMOHAN, J

MARCH 11, 2014

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