

GAHC010073912018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2365/2018

OMBIR SINGH
S/O- ZILAY SINGH, R/O- VILL MAHMOODPUR, P.O- AURANGABAD, DIST-
BULANSAHAR, UTTAR PRADESH, PIN- 245401

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY ITS COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,
HOME (C) DEPTT, , DISPUR, GUWAHATI- 06

2:THE DEPUTY SECRETARY
TO THE GOVT OF ASSAM
HOME(C) DEPTT
DISPUR
GUWAHATI- 0

Advocate for the Petitioner : MR A ALI

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 15-11-2023

Heard Mr. A. Ali, learned counsel for the petitioner and Mr. K. Gogoi,

learned Govt. Advocate appearing for the respondent nos.1 and 2.

2. The petitioner is an ex-serviceman, having discharged from Indian Air Force on 31.03.2007 as Sergeant. The petitioner projects that the Arms Licence as an Ex-service man makes him entitlement to reemployment in Civil sector.

3. The petitioner claims that on 24.07.2017, the original copy of the said Arms Licence along with some other important documents were lost in Gautam Budh Nagar district of Uttar Pradesh and accordingly, he had lodged a FIR which was registered as Crime No.243/2017. The concerned police station of Sector 49, Noida, Gautam Budh Nagar had filed a Closure Report/ Final Report no.58/2007 dated 02.08.2007 which was accepted by the concerned Court. Thereafter the petitioner submitted various representations to the authorities for renewal of his arms licence. Thereafter, by the impugned communication dated 16.08.2013, the Deputy Secretary to the Govt. of Assam, Home (C), Department (respondent no.2) addressed to the District Magistrate, Bulandshahar, Uttar Pradesh requested the said authority to issue a fresh Arms licence to the petitioner after observing all required formalities as per the guidelines of Ministry of Home Affairs and the said communication. The loss of the Arms licence and a report by the District Magistrate, Bulandshahar, Uttar Pradesh was referred to in the said communication.

4. The learned counsel for the petitioner has submitted that under the provisions of Rule 28 of the Arms Rules, 2016, it is permissible for the authorities to issue a duplicate licence in respect of licence which is lost or accidentally destroyed on payment of fees with which the original licence was

chargeable. Accordingly, it is submitted that as there are provisions in the Arms Act, 1959 as well as the Arms Rules, 2016, providing for renewal of licence, the non-issuance of the duplicate licence to the petitioner envisages his fundamental right and hence this writ petition.

5. The learned Addl. senior Govt. Advocate has submitted that under the provisions of section 15 of the Arms Act, 1959, licence is issued for a period of 5 years which was earlier 3 years and that for renewal of licence, a time bound application is required to be submitted. It is submitted that in view of the provisions of sub-section 1 of section 15 of the Arms Act, 1959, there is a deemed revocation of the licence which has lapsed by efflux of time. In this regard, it is submitted that there is no averment that the Arms licence of the petitioner was renewed from time to time till the present writ petition was filed on 10.04.2018.

6. By referring to the provisions of Rule 17 of the Arms Rules, 2016 it is submitted that if a person holds a licence permanently or temporarily shifts to a new place of residence for more than 6 months, he is required to sent intimation about the change of address to the licensing authority before expiry of 6 months and the licence is required to be produced before the new licensing authority by applying in Form-B-I and indicating the place of his new residence. In this regard the learned Govt. Advocate has also referred to the provisions of Rule 24 of the said 2016 Rules wherein it is also provided that the application for renewal in case of change of place of residence who would be the licensing authority of the district who under proviso to sub-rule 3 of Rule 24 becomes responsible for watching all future renewal of the licence.

7. Hence, it is submitted that as the Arms licence of the petitioner has expired by efflux of time, there is no infirmity in the order of the respondent no.2 in requesting the District Magistrate, Bulandshahar, Uttar Pradesh to issue a fresh licence to the petitioner as because the said expired could not have been renewed in the State of Assam as the petitioner is no longer a permanent or a temporary resident of this State.

8. The Court finds force in the submission made by the learned Addl. senior Govt. Advocate to the effect that afflicted from the contents of the writ petition it cannot be said that the Arms licence of the petitioner was in force on 10.04.2018 when the petitioner had approached this Court by filing this writ petition. Therefore, when the Arms licence is not in force, the question of issuance of a duplicate thereof the petitioner would not arise. It is also seen that the respondent no.2 had, by the impugned communication dated 16.08.2013, requested the District Magistrate, Bulandshahar, Uttar Pradesh to issue a fresh Arms licence to the petitioner after observing all formalities. This amounts to a no-objection from the State of Assam to the District Magistrate within whose jurisdiction the petitioner was then residing because as per the said communication dated 16.08.2013 by the respondent no.2 the petitioner was a resident of village Mahmoodpur, P.O. Ahmedabad, district Bulandshahar.

9. As the law prohibits the District Magistrate within whose jurisdiction the Arms licence work is not residing to renew the arms licence, the Court finds no reason to interfere with the impugned communication dated 16.08.2013.

10. Nonetheless, in the event the petitioner who now projects to be residing in a different address, applies before the respondent no.2 for issuing a request to the competent authority within whose jurisdiction he is presently residing for granting arms licence, the respondent no.2 shall consider the said application of the petitioner and pass appropriate orders thereon subject to condition that the petitioner shall return the impugned communication dated 16.08.2013 (Annexure-G) bearing Memo no.HMM-20/99/397 back to the said respondent no.2.

11. With the aforesaid observations, this writ petition stands closed.

JUDGE

Comparing Assistant