

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 29th April, 2015.

+ **LPA No.41/2015**

PARVEEN KUMAR BENIWAL **Appellant**

Through: Mr. Sunil K. Mittal with Mr. Vipin K. Mittal, Advs.

Versus

GOVT. OF NCT OF DELHI & ANR. **Respondents**

Through: Ms. Zubeda Begum and Ms. Sana Ansari, Advs. for GNCTD.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This intra court appeal impugns the judgment dated 22nd December, 2014 of the learned Single Judge of dismissal of W.P.(C) No.8111/2014 preferred by the appellant. The said writ petition was filed impugning the order dated 6th August, 2014 of the Lt. Governor of Delhi of dismissal / rejection of the appeal under Section 18 of the Arms Act, 1959 preferred by the appellant against the order dated 1st April, 2014 of the Additional Commissioner of Police (ACP) (Licensing) revoking the arms licence of the appellant.

2. This appeal came up for admission on 12th February, 2015 when the

counsel for the respondents Govt. of NCT of Delhi (GNCTD) and ACP (Licensing) appeared on advance notice and with the consent of the counsels, arguments in the appeal were finally heard and judgment reserved.

3. The appellant, claiming to be carrying on business as a Cable TV Service Provider, in the year 2006 applied for and was granted an arms licence which was renewed from time to time. The ACP (Licensing), vide order-cum-show cause notice dated 31st October, 2013 suspended the arms licence of the appellant with immediate effect and called upon the appellant to deposit the licenced weapon with the nearest Police Station immediately and to show cause, as to why the arms licence of the appellant should not be cancelled on the ground of the appellant, at the time of applying for renewal of the licence, having not intimated the factum of his being involved in case FIR No.409/2010 dated 27th December, 2010 under Sections 302/34 IPC of Police Station K.N. Katju Marg, New Delhi and in case FIR No.280/2013 dated 24th August, 2013 under Sections 323/341/336/506/34 IPC of Police Station Rani Bagh, New Delhi, and for which reason the ACP (Licensing) was of the view that the appellant was “not a fit person to hold an arms licence in the interest of public safety at large”.

4. The appellant submitted a reply dated 8th November, 2013 to the

aforesaid show cause notice stating, that he had been falsely implicated in case FIR No.409/2010 and had been acquitted on 8th August, 2012 and that the complainant in case FIR No.280/2013 had himself, when the appellant had applied for bail thereunder, filed an affidavit that the FIR had been lodged as a result of misunderstanding and further that with the consent of the complainant, the said FIR stood quashed on 16th December, 2013. The appellant further replied that his licenced weapon had never been used in the commission of any crime nor was the case property in any crime and that he “had not intentionally concealed” the said facts, while applying for renewal of the licence and the said facts remained to be stated out of “sheer inadvertence”.

5. The ACP (Licensing) vide order dated 1st April, 2014 cancelled the arms licence of the appellant, observing; (i) that a perusal of the order dated 8th August, 2012 in case FIR No.409/2010 supra showed that the appellant had been acquitted by giving benefit of doubt and the Court had passed strictures against the local police for faulty investigation etc.; (ii) that FIR No.280/2013 had also been quashed on the ground of settlement with the complainant and subject to cost of Rs.25,000/- on the appellant and the same also did not constitute an honourable acquittal; (iii) rather, the FIRs

against the appellant showed the propensity of the appellant to indulge in quarrel with the others; (iv) that the failure of the appellant to disclose the said facts was in violation of the Arms Act; and, (v) that the appellant was thus indeed not a fit person to hold an arms licence.

6. The Lt. Governor, Delhi dismissed / rejected the statutory appeal preferred by the appellant, further noting that perjury proceedings had been initiated against the person on whose statement the appellant had been acquitted in case FIR No.409/2010 and observing that the order of the ACP (Licensing) of revocation of licence was fair and there was no reason to interfere therewith.

7. The ACP (Licensing) in the counter affidavit to the writ petition filed before the learned Single Judge also pleaded; (a) that the appellant, on 17th August, 2012 had applied for renewal of his arms licence; (b) that in Column No.15 of the prescribed form for renewal of arms licence, the appellant was asked “whether presently / previously involved in any criminal case (whether convicted / acquitted or pending trial), if yes details of the case”; (c) that the appellant against the said Column wrote “N/A”; (d) that on the basis of the information so furnished by the appellant, his arms licence was renewed till 30th April, 2015; (e) that concealment of material

facts, while applying for or seeking renewal of arms licence, is a ground for revocation of licence; (f) that the appellant neither in the reply to the show cause notice nor in the personal hearing given to him could give any justifiable reason, as to why he indulged in suppression of material facts; (g) that the Supreme Court in ***Chandrakant Hargovindas Shah Vs. Deputy Commissioner of Police*** (2009) 7 SCC 186 has held that the statutory authority is justified in revoking the licence, where the licensee is guilty of ‘*suppressio veri*’ and ‘*suggestio falsi*’; (h) that the Full Bench of the Patna High Court in ***Kapil Deo Singh Vs. State of Bihar*** AIR 1987 Patna 122 held that registration and pendency of criminal case for a major offence is an adequate reason to justify the suspension or revocation of arms licence.

8. The learned Single Judge dismissed the writ petition finding / observing / holding: (I) that the argument of the appellant that since he had been acquitted and / or since the FIRs had been quashed, his arms licence could not be cancelled / revoked, has no merit as the issue is not, whether the appellant is guilty but whether a reasonable person could infer that the appellant was involved in those incidents; (II) that the standard of proof required for conviction in a criminal proceeding, of the guilt being proved beyond reasonable doubt, is materially different from the consideration that

the licensing authority has to bear, while forming an opinion, whether to revoke a licence; (III) that for licensing authority to take note of possible involvement of the licensee in an offence, conviction is not essential—all that is required to be considered is the likely involvement in the incident; (IV) that the offence of which the appellant was accused in both the FIRs were serious; (V) that this Court in exercise of powers under Article 226 of the Constitution of India would not supplant its opinion over that of the concerned authority; (VI) that there would be no interference in the opinion of the ACP (Licensing), unless the decision was found to be arbitrary, capricious, unreasonable or for extraneous considerations or the decision making process was faulty; (VII) that it could not also be said that the decision of the statutory authorities was so unreasonable which no prudent person could have formed; (VIII) that merely because the appellant had been acquitted, did not mean that the appellant in response to Column No.15 of the application form for renewal of licence, was not required to disclose the FIRs; (IX) that the judgment of a Division Bench of this Court in ***Sheru Vs. Deputy Commissioner of Police (Licensing), Delhi*** 50 (1993) DLT 390 could not be read as laying down that arms licence could never be revoked on the ground of mere involvement in criminal cases, if the licensed weapon

was not used.

9. The counsel for the appellant before us, besides reiterating the contentions urged before the ACP (Licensing), Lt. Governor and the learned Single Judge, has relied on para 14 of the opinion of one of the Judges of the Division Bench in *Sheru* supra, on para 12 of *Braham Parkash Vs. State* (1994) 53 DLT 454 (DB) and on the judgment dated 5th July, 2010 of a learned Single Judge of the Allahabad High Court in Writ (C) No.22659/2006 titled *Govind Singh Vs. State of U.P.*

10. Per contra, the counsel for the respondents has taken us through the form filled up by the appellant on 17th August, 2012 for renewal of his arms licence and has drawn attention to Section 17(3)(c) of the Arms Act which empowers the licensing authority to suspend / revoke an arms licence, if *inter alia* satisfied that the holder of the licence for any reason is unfit for a licence under this Act or if so deems necessary for the security of the public peace or for public safety or if the licence was obtained by suppression of material information or on the basis of wrong information.

11. We are entirely in agreement with the reasoning given by the learned Single Judge and after having considered the contentions raised and the judgments relied upon by the counsel for the appellant, do not find any

reason to, in exercise of our jurisdiction under the Letters Patent, interfere therewith.

12. Section 17(3) of the Arms Act is as under:

“(3) The licensing authority may by order in writing suspend a licence for such period as it thinks fit or revoke a licence-

- (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; or*
- (d) if any of the conditions of the licence has been contravened; or*
- (e) if the holder of the licence has failed to comply with a notice under sub-section (1) requiring him to deliver-up the licence.”*

13. Suppression of material information or furnishing of wrong information at the time of obtaining the licence has expressly and specifically been made a ground for revocation of the licence. It is not controverted that the same applies to obtaining renewal of licence as well. It is not as if, it has been left to the discretion of the applicant for arms licence, as to what information should be furnished. The information which the ACP (Licensing) requires for forming an opinion, whether to grant / renew an arms licence is prescribed in the form, format whereof is contained in the Arms Rules, 1962 framed under the Act. It thus follows that all the information required to be furnished in the said form is material information. One of the information sought is in Column No.15 as noticed above. Thereunder, the applicant is required to disclose not only, whether at the time of filling up of the form but previously also, if he / she was involved in any criminal case and whether he / she was convicted or acquitted therein along with the details thereof. The same is undoubtedly a material information for the ACP (Licensing) to form an opinion, whether to grant an arms license or not. To be fair to the counsel for the appellant, he has not even argued that the said information is not material. Section 17(3)(c) makes the mere suppression of said information a ground for

revocation. Again, to be fair, the counsel for the appellant has not even controverted that the appellant did indeed suppress the information which he was required to furnish in Column No.15. What he however contends is that since on the date of filling up of the form, the said cases were not pending and in one the appellant had been acquitted and in another the FIR had been quashed, the appellant inadvertently did not furnish the said information. However, the column leaves no manner of doubt that even any previous involvement in a criminal case alongwith the outcome thereof, is required to be disclosed. Section 17(3)(c) of the Act does not qualify the words “suppression of material information” with the words “intentional”. Thus, we are not required to go into the question, whether the suppression was intentional and / or *bona fide* and / or inadvertent. Once it is found that there was suppression of material fact or wrong information was given at the time of obtaining / renewing arms licence, the same, without anything more, constitutes a ground for revocation of licence. The said ground of revocation is independent of the other grounds of revocation i.e. of the Licensing Authority deeming revocation to be necessary for the security of the public peace or for public safety. Thus, once the ground of revocation under Section 17(3)(c) i.e. of suppression of material information /

furnishing of wrong information is made out, the concerns of public peace or public safety are irrelevant.

14. The Supreme Court in *Kendriya Vidyalaya Sangathan Vs. Ram Ratan Yadav* (2003) 3 SCC 437 was concerned with an application for an employment also requiring the applicant to disclose whether he had ever been prosecuted / kept under detention / bound down / fined, convicted by a Court of law of any offence and whether any case was pending against him in any Court of law and a consequent term of appointment that suppression of any information may lead to dismissal from service. Finding the answers given in the application form to the said queries to be negative and which turned out to be false, the order of dismissal from service was passed and which was challenged by a writ petition in the High Court. The High Court allowed the writ petition accepting the explanation that the said queries in the application form were not understood properly and that the criminal case had been withdrawn by the State Government and holding that the charge in the criminal case also was not so serious. The Supreme Court set aside the judgment of the High Court and held that the object of requiring the said information was to ascertain and verify the character and antecedents of the applicant, to judge his suitability. It was further held that suppression of

material information and making a false statement had a clear bearing on the character and antecedents of the applicant and a candidate who had suppressed material information / given false information could not claim a right to continue in service and the employer was within its right to terminate the employment.

15. As far as the judgment relied upon by the counsel for the appellant in *Sheru* supra is concerned, the challenge therein was to the order of suspension of arms licence-cum-show cause notice against revocation thereof. The two members of the Division Bench rendered separate opinions. While one (Jaspal Singh, J.) held that Section 17(3) permits suspension of arms licence but found fault with the ground of suspension *inter alia* observing that though pendency of major or capital crime case may possibly lead to the conclusion that the person is unfit for licence, more so, when the licensed weapon is used or employed in the alleged crime but the pendency of a single criminal case where admittedly no firearm was used, cannot attract Section 17(3)(b), the other learned Judge (Mahender Narain, J.) held that there could be no order of suspension of arms licence, without hearing the licensee and holding an enquiry and giving reasons therefor. *Sheru* supra was thus concerned only with a ground of suspension

under Section 17(3)(b) and the ground of suspension / revocation under Section 17(3)(c) i.e. of suppression of material facts, while applying for licence / renewal of licence, did not fall for consideration therein. We therefore do not find the opinion of one of two Judges of the Division Bench in *Sheru* supra to be of any relevance to the present controversy.

16. Similarly, *Braham Parkash* supra also is not found to be of any relevance to the present controversy. The outcome therein was as a result of a conclusive finding of fact that the arms licence holder had not concealed any facts and that the Court of competent jurisdiction had held the criminal case against him to be false and fabricated. The position here is entirely different. Not only is the appellant guilty of suppression within the meaning of Section 17(3)(c) supra but the culmination of the criminal cases against the appellant is not on a finding of the same being false and fabricated but as a result of settlement and / or by giving benefit of doubt to the appellant. We may in this regard also notice that the appellant has also shied away from filing before us the judgment of his acquittal or the proceedings in the petition filed for quashing of the other FIR and which would have thrown light on the nature of the involvement of the appellant. Though during the hearing, we asked the counsel for the appellant for the same but he did not

have the same in his file also. Even after the judgment has been reserved, no copies thereof have been filed.

17. **Govind Singh** supra also merely holds that mere involvement of the licence holder in a criminal case cannot *ipso facto* lead to the conclusion that it is not in the interest of security of public peace or public safety that the licence should be revoked. The same is also not a judgment on Section 17(3)(c).

18. Per contra, the counsel for the respondents has drawn our attention to a recent judgment dated 15th January, 2014 of a Division Bench of the Allahabad High Court in Special Appeal No.62/2014 titled **State of U.P. Vs. Mahipat Singh** 2014 (2) ALJ 443 holding; (A) that the scheme of the Arms Act and the Arms Rules indicates that a wide discretion has been given to the licensing authority; (B) that maintenance of law and order and public peace and safety is the responsibility of the State; (C) that a citizen cannot assert a right to hold a firearm licence; (D) that the discretion which is conferred upon the licensing authority cannot be confined to fixed categories; (E) whether there is a perception of threat to the security of a citizen has to be considered by the licensing authority; (F) that the Court cannot substitute its own opinion for that of the licensing authority about a

perception; (G) that the scope of judicial review is limited; (H) that where the relevant circumstances have been taken into consideration and no extraneous considerations were taken into account, it would be outside the purview of judicial review of the Court to substitute its own opinion with the opinion of the licensing authority.

19. We respectfully concur with the view aforesaid of the Division Bench of the Allahabad High Court.

20. Mention may also be made of the judgment of the Division Bench of this Court in *People for Animals Vs. UOI* 180 (2011) DLT 460 holding that grant of a licence for acquisition and possession of firearms was only statutory privilege and not matter of fundamental right under Article 21 of the Constitution of India; such a licence is materially different from a licence for manufacture, sale etc. and while latter confers a right to carry on a trade or business and is a source of earning livelihood, the former is merely a personal privilege for doing something which without such privilege is unlawful; grant of such a privilege does not involve the adjudication of the right of individual nor does it entail civil consequences save that rejection of an application for grant of licence or cancellation of a licence may become legally vulnerable if arbitrary or capricious or without

application of mind; it was further held that no citizen has a blanket right to carry firearms and the application for firearms may be made mostly with the object of protecting the person or property but which too is mainly the function of the State.

21. Similarly, a Division Bench of the Bombay High Court in ***Devendra Tukaram Katke Vs. The State Of Maharashtra*** MANU/MH/0271/2009 has held that once the concerned authority has for reasons recorded and for ensuring security of public peace and public safety cancelled the arms licence, the same ought not to be interfered with in writ jurisdiction since it raises disputed questions of fact.

22. One of us (Mr. Rajiv Sahai Endlaw, J.) sitting singly has in judgment dated 5th October, 2011 in W.P.(C) No.7360/2011 titled ***Dharambir Khattar Vs. GNCTD inter alia*** held as under:

“9. Our society has recently witnessed scenes/situations hitherto unknown. There have been instances where people, owing to the tensions of city life, have at the slightest provocation and in a fit of rage misused firearms. There have been cases where firearms have been used to kill, it appears for the sheer joy, without even any reason or provocation. The assessment made by the authorities in whom the power is vested to assess whether a person is a suitable person to hold a firearm or not and whether allowing a person to continue holding a firearm is fraught with danger cannot be lightly interfered with. As aforesaid the petitioner has no right to

possess a firearm. Though the petitioner has enjoyed the privilege for over two decades but the recent developments qua the petitioner viz of being an accused in a scam and hiding the same from the licensing authorities do certainly constitute a cause for the licencing authorities to revoke such licence.”

The aforesaid applies to the present controversy also. Once the rules require an applicant for arms licence / renewal thereof to disclose his previous involvement in a criminal case alongwith the particulars, acquittal is no defence to such non-disclosure. It is for the licensing authority to judge the effect of such acquittal and acquittal in a criminal case does not take away the duty of the applicant for arms licence / renewal thereof to disclose the same. As aforesaid, the statute has made mere non-disclosure, a ground for revocation of licence. The Supreme Court in ***A.P. Public Service Commission Vs. Koneti Venkateswarulu*** (2005) 7 SCC 177 while following ***Kendriya Vidyalaya Sangathan*** supra negated the argument that there was no *mala fide* intention in not giving full particulars by holding that of the purpose for which the information is called, the authority seeking the information is the ultimate judge and it is not open to the candidate to sit in judgment about the relevance of the information called and decide to supply it or not. Similarly, the plea of inadvertence was negated by holding that the said plea taken as an excuse for suppression / false declaration for the

first time after the truth was discovered is unacceptable.

23. We therefore find the appeal to be thoroughly misconceived and dismiss the same with costs of Rs.10,000/- payable to the Delhi Police Welfare Fund, PHQ, I.P. Estate, New Delhi within four weeks hereof.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

APRIL 29, 2015

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