

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

% **Date of decision: 23rd November, 2015.**

+ **W.P.(C) 6105/2014**

ASHISH TALGOTRA **Petitioner**

Through: Mr. R. Satish Kumar, Adv.

Versus

**ADDL.DY.COMMISSIONER OF POLICE ARMS AND
EXPLOSIVE LICENSING UNIT** **Respondent**

Through: Mr. Raman Duggal with Ms. Aayushi
Gupta, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petition impugns the order, dated 21st May, 2014 of Hon'ble the Lt. Governor, Delhi acting as an Appellate Authority under Section 18 of the Arms Act, 1959, of dismissal of appeal preferred by the petitioner against the order dated 21st March, 2014 of the respondent Additional Deputy Commissioner of Police (Licensing) of refusing the application of the petitioner for an arms licence.

2. Notice of the petition was issued. In the order dated 28th January, 2015, two judgments of a learned Single Judge of this Court, dated 9th September, 2013 in W.P.(C) No.1631/2012 titled *Vinod Kumar Vs. The State* and dated 20th September, 2013 in W.P.(C) No.5959/2013 titled *Sahil*

Kohli Vs. Additional Commissioner of Police relied upon by the counsel for the petitioner and the response of the counsel for the respondent thereto that the same rely upon the judgments of the Allahabad High Court which have been considered by the Full Bench of that Court, were noted. In subsequent order dated 13th April, 2015, the contention of the counsel for the respondent that the issue was being examined by the Division Bench of this Court in LPA No.41/2015 (incorrectly recorded in the order as LPA No.14/2015), is recorded. On 28th July, 2015, the counsel for the respondent handed over a copy of the judgment dated 29th April, 2015 of the Division Bench in LPA No.41/2015 titled ***Parveen Kumar Beniwal Vs. Govt. of NCT of Delhi***. On request of the counsel for the petitioner, liberty was given to him to file written arguments and judgment reserved.

3. The respondent, vide order dated 21st March, 2014 refused arms licence to the petitioner reasoning (i) that the petitioner does not have any good reason for grant of an arms licence; (ii) that the petitioner does not have any specific threat; and (iii) that the local police had reported that the petitioner does not have any requirement or need of weapon.

4. The petitioner, born on 26th September, 1991 and carrying on construction business in the name and style of M/s. Khemraj & Sons

Construction Pvt. Ltd. appealed to Hon'ble the Lt. Governor contending that the respondent Licensing Authority had applied the wrong test in refusing arms licence to the petitioner inasmuch as the test to be applied was not whether the applicant had a need or requirement for a licence but whether the petitioner is disentitled from possessing or carrying firearm. During the course of hearing before the Appellate Authority, he further contended that in the course of his business he has to handle large amount of cash daily, particularly when returning home late at night and thus needs to have a firearm on his person for his protection.

5. The Appellate Authority however applied the same test and held that the petitioner had not established any genuine need to justify the grant of an arms licence and there was no need for interference in the order of the Licensing Authority.

6. A Co-ordinate Bench of this Court in the judgments supra relied upon by the petitioner in the petition itself indeed held that except in cases covered by Section 13(3)(a) which do not fall under Section 14(1), though the Licensing Authority has a discretion whether to grant licence or not, such a discretion is not absolute nor can it be exercised on subjective considerations. It was accordingly held that an arms licence cannot be

denied to a person in whose case a situation contemplated by Section 14(1) of the Act does not exist and solely on the ground that there is no specific threat to him or his family members. It was reasoned that it is not possible for the police to be present everywhere and every time to protect the citizens and therefore a prudent citizen is justified in taking adequate steps to protect himself and his property and such steps would include acquiring a licensed weapon so as to avoid any crime against his body and property. Reliance was placed on the judgments of the Allahabad High Court in *Abdul Kafi Vs. District Magistrate, Allahabad* 2003 ALJ 1959, *Dinesh Kumar Pandey Vs. State of U.P.* 2013 (1) ALJ 449 and *Syed Afzal Mehdi Vs. The State of A.P.* 2010 (4) ALT 377.

7. However the Division Bench of this Court in *Parveen Kumar Beniwal* supra approved of the reasoning given by the Single Judge that the High Court, in exercise of powers under Article 226 of the Constitution of India, would not supplant its opinion over that of the Licensing Authority and that there would be no interference in the opinion of the Licensing Authority unless the decision was found to be arbitrary, capricious, unreasonable or for extraneous considerations or the decision making process was faulty. A recent judgment dated 15th January, 2014 of the 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 laying down (i) that maintenance of law and order and public peace and safety is the responsibility of the State; (ii) that a citizen cannot assert a right to hold a firearm licence; (iii) that the discretion which is conferred upon the Licensing Authority cannot be confined to fixed categories; (iv) whether there is a perception of threat to the security of a citizen has to be considered by the Licensing Authority; (v) that the Court cannot substitute its own opinion for that of the Licensing Authority about a threat perception; (vi) that the scope of judicial review is limited; (vii) 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, was noticed and concurred with. The Division Bench further referred to the judgment of another Division Bench in ***People for Animals Vs. UOI*** 180 (2011) DLT 460 holding that grant of a licence for acquisition and possession of firearms is only a statutory privilege and not matter of fundamental right under Article 21 of the Constitution of India and that 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, was also noticed. The Division Bench further held that no citizen has a blanket right to carry firearms and the application for firearms can be made mostly with the object of protecting the person or property but which too is the function of the State.

8. It would thus be seen that the judgments in ***Vinod Kumar*** and ***Sahil Kohli*** supra cannot be said to be good law. I may also notice that the view therein is contrary to, at least earlier judgment dated 5th October, 2011 in W.P.(C) No.7360/2011 titled ***Dharambir Khattar Vs. Government of NCT of Delhi*** and other judgments of this Court noticed therein.

9. I have recently further dealt with the said subject in order dated 18th September, 2015 in W.P.(C) No.8893/2015 titled ***Nirankar Rastogi Vs. Joint Commissioner of Police***, order dated 23rd September, 2015 in W.P.(C) No.8928/2014 titled ***Arvind Kumar Chauhan Vs. Lt. Governor***, order dated 2nd November, 2015 in W.P.(C) No.6520/2015 titled ***Yashpal Singh Vs. Licensing Authority, Joint Commissioner of Police*** and order dated 18th November, 2015 in W.P.(C) No.6514/2014 titled ***Ajay Leekha Vs. Assistant Commissioner of Police, Arms & Explosive***.

10. The counsel for the petitioner in his written arguments has merely reiterated the proposition in *Vinod Kumar* and *Sahil Kohli* supra and following which the petitioner has been pursuing his zeal for an arms licence. However the same are no longer good law, as aforesaid.

11. Before parting, I may also state that the need felt by the petitioner for carrying a firearm, to protect himself while bringing large amounts of cash when returning home from work, can also be met by the petitioner stopping dealing in cash. There is no reason for the petitioner to not transact his business through banking channels. There does not appear to be any reason for the petitioner to deal in cash. No law requires so. In fact the law requires to the contrary.

12. There is therefore no merit in the petition. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

NOVEMBER 23 2015

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