

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

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Date of decision: 29th September, 2015

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W.P.(C) No.8000/2013

RAJKUMAR PANDEY

.... Petitioner

Through: Ms. Urvashi Singh, Adv.

Versus

**ADDITIONAL COMMISSIONER OF
POLICE & ANR.**

..... Respondents

Through: Mr. Rishikesh Kumar & Ms. Neha
Rastogi, Advs.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

CM No.21624/2015 (of petitioner for early hearing)

1. For the reasons stated, the application is allowed.
2. The writ petition is taken up for hearing today itself.
3. The application is disposed of.

W.P.(C) 8000/2013

4. The petition impugns the order dated 20th March, 2013 of the Lieutenant Governor, Delhi acting as an Appellate Authority under Section 18 of the Arms Act, 1959 of dismissal of the appeal preferred by the appellant against the decision dated 9th March, 2012 of the respondent No.1

Licensing Authority under the said Act of rejection of the application of the petitioner for grant of an arms license.

5. Notice of the petition was issued and a counter affidavit has been filed by the respondents and to which a rejoinder has been filed by the petitioner. Rule was issued and the petition ordered to be listed in the category of “Regular Matters” as per its turn. The counsel for the petitioner has been heard.

6. It is the case of the petitioner, i) that the petitioner was brutally attacked by some anti-social elements with an intent to grab the property of the petitioner and suffered grievous hurt in the said attack and of which FIR No.314/2009 was registered and the prosecution is pending; ii) that the said anti-social elements continue to threaten the petitioner, to coerce the petitioner into withdrawing the prosecution; in view of the said threats, apprehension and danger, the petitioner on 4th November, 2011 applied for an arms license “for his personal safety”; iii) that the Licensing Authority however rejected the said application on the ground that there was no specific threat against the petitioner; iv) though the petitioner preferred an appeal but the same was also dismissed; v) that the impugned orders suffer

from non application of mind and overlooking the facts; vi) that once the petitioner is the main complainant in a prosecution, the possibility of danger to his safety cannot be ruled out. Reference in the writ petition itself is *inter alia* made to:

- (a) ***Kapildeo Singh Vs. State of Bihar*** AIR 1987 Patna 122 to contend that arms license can be refused only where the Licensing Authority has reasons to believe that the petitioner is unfit for the licence.
- (b) ***Ganesh Chandra Bhatt Vs. District Magistrate, Almora*** AIR 1993 Allahabad 291 to contend that the general rule is to grant the arms license when sought and refusal is an exception.
- (c) Judgments all dated 9th October, 2013 of this Court in W.P.(C) No.1631/2012 titled as ***Vinod Kumar Vs. The State***, in W.P.(C) No.5959/2013 titled as ***Sahil Kohli vs. Additional Deputy Commissioner of Police*** and in W.P.(C) No.6471/2013 titled as ***Amardeep Vs. Additional Commissioner of Police*** to contend that presence of specific threat is not necessary for the grant of

a arms license and the authority dealing with application should exercise its discretion on subjective consideration.

7. The Lieutenant Governor, Delhi, while dismissing the appeal of the petitioner vide the impugned order dated 20th March, 2013 has recorded, a) that the local police had not found any specific threat to the appellant; b) that during the pendency of the appeal, the concerned DCP was also directed to submit a report and had also reported that the accused in the FIR aforesaid who was earlier residing in proximity to the house of the petitioner had shifted his residence and there was no apprehension of quarrel / harassment between the said accused and his wife with the appellant.

8. The respondents in their counter affidavit have reiterated that the need of the petitioner for a arms license was on enquiry not found to be genuine and that as far as the threat presumed by the petitioner from the accused in the prosecution aforesaid is concerned, preventive action under Sections 107 and 150 Cr.P.C. had been taken. It is also pleaded that W.P.(Crl.) No.1788/2009 filed by the petitioner had been dismissed on 21st December, 2009 and with respect to the judgment of the Allahabad High Court relied upon by the petitioner, it is pleaded that the same, in terms of the judgment

of the Full Bench of the Allahabad High Court in ***Kailash Nath Vs. State*** AIR 1985 Allahabd 291 and ***Rana Pratp Singh Vs. State of Uttar Pradesh*** 1996 Crl LJ 665, is no longer good law.

9. I may notice that else the consistent view of this Court and other Courts in (i) ***Sunil Kumar Bharala Vs. State of U.P.*** MANU/UP/0481/2015 (DB); (ii) ***Gulab Radhwaj Vs. State of U.P.*** MANU/UP/0498/2015 (DB); (iii) ***Dr. Pankaj Tripathi Vs. State of U.P.*** MANU/UP/0558/2014 (DB); and, (iv) ***Om Prakash Rai Vs. State of U.P.*** MANU/UP/0846/2014 (DB) has been that a perception of threat is a question of fact which cannot be assessed by the individual himself but can only be assessed by the investigating agencies and it is not the domain of the Writ Court to consider whether a threat perception exists in favour of a particular person or not. I have in ***Shiv S. Sharma Vs. Union of India*** MANU /DE /1024 /2010 held that the Court cannot foray into determining whether there is any threat to any individual and the same is purely in the domain of executive functions and that the level / scale of perception is subjective; what an impartial person adjudicating with an objective view may perceive as a threat of a lesser level / scale, is bound to be a threat of a higher level / scale to the threatened person. Similar observations are to be found in ***Suhaib Ilyasi Vs. Union of***

India MANU/DE/1153/2002 where also, it was observed that a person may overreact or over-play the threat and the decision of security agencies and experts in this regard is not to be substituted by the opinion either of the petitioner or of the Court unless it is shown that the decision is wholly arbitrary or perverse and has failed to consider the relevant material produced. The Division Bench of this Court in **Shri Ashwini Kr. Chopra Vs. Union of India** AIR 2011 Delhi 154 also held that right under Article 21 of the Constitution of India is not absolute and grant of security cover is within the executive domain and it is the executive which is in the best know of when and what sort of security cover be granted to a particular person. It was further held that no one can claim as a matter of legal right to be given a particular security cover. Another Division Bench, in **People for Animals Vs. Union of India** 180 (2011) DLT 460, held that grant of a licence for acquisition and possession of firearms is only a statutory privilege and not a matter of fundamental right under Article 21 of the Constitution; such a licence is materially different from a licence for manufacture, sale etc. and that while the 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

privilege does not involve adjudication of right of individual nor does it entail civil consequence.

10. A Division Bench of this Court in ***Parveen Kumar Beniwal Vs. Govt. of NCT of Delhi*** MANU/DE/1304/2015 held that a citizen cannot assert a right to hold a firearm licence on the ground of threat perception and that whether there is a perception of threat to the security of a citizen has to be considered by the licensing authority and not by the Courts. A Division Bench of High Court of Andhra Pradesh has taken the same view in ***G. Subas Reddy Vs. State of Andhra Pradesh*** 1997 Cri LJ 1296. A Division Bench of the Bombay High Court in ***Devendra Tukaram Katke Vs. The State of Maharashtra*** MANU/MH/0271/2009 also has held that once the concerned authority has for reasons recorded cancelled the arms licence, the same ought not to be interfered with in writ jurisdiction since it raises disputed questions of fact.

11. I have in judgment dated 5th October, 2011 in W.P.(C) No. 7360/2011 titled ***Dharambir Khattar Vs. Government of NCT of Delhi & Ors.*** dealt in details with the law in the Allahabad High Court particularly with reference

to *Ganesh Chandra Bhatt* supra. In view thereof, need is not felt to state anything further here.

12. The counsel for the petitioner has contended that arms license is to be granted unless there are sufficient reasons to refuse the same.

13. I am afraid, the aforesaid is contrary to the dicta of the Division Bench in *Parveen Kumar Beniwal* supra holding that, i) the scheme of the Arms Act and the Arms Rule indicate that a wide discretion has been given to the Licensing Authority; ii) that maintenance of law and order and public peace and safety is the responsibility of the State; iii) that a citizen cannot assert a right to hold a firearm license; iv) that the discretion which is conferred upon the Licensing Authority cannot be confined to fixed categories; v) whether there is a perception of threat to the security of a citizen has to be considered by the licensing authority; vi) that the Court cannot substitute its own opinion for consideration of the Licensing Authority; and, vii) the scope of judicial review is limited.

14. There is thus no merit in the petition. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 29, 2015

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