

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

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Date of decision: 22nd December, 2015

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W.P.(C) 7466/2014

BIJENDER SINGH

..... Petitioner

Through: Mr. G.P. Thareja & Mr. Vineet Bahl,
Adv.

Versus

COMMISSIONER OF POLICE AND ANR Respondents

Through: Mr. Siddhartha Shankar Ray, Adv.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petition impugns the order dated 9th July, 2014 of Hon'ble the Lieutenant Governor, Delhi acting as the Appellate Authority under Section 18 of the Arms Act, 1959 of dismissal of the appeal filed by the petitioner against the order dated 5th September, 2013 of the Joint Commissioner of Police, Licensing Unit, Delhi cancelling the arms licence bearing No. ODBP/12/2013/1 of the petitioner.

2. Notice of the petition was issued and a counter affidavit has been filed by the respondents. The petitioner inspite of opportunity has not filed rejoinder. The counsels have been heard.

3. It is the case in the petition:

- (i) that the petitioner is a permanent resident of village Jawahar Nagar Elam, Police Station Kandhla, Tehsil Shamli, District Muzaffarnagar, Uttar Pradesh but used to visit Delhi in respect of his business dealings and also purchased plot No.C-18, situated at Jain Nagar Extension, Karala, Delhi and thereafter constructed a house thereon in the year 2000;
- (ii) that the petitioner however did not shift his residence to Delhi and let out the aforesaid house at Delhi and himself continued to live at his native place aforesaid where his children were also studying;
- (iii) that the petitioner, in the year 2008, upon learning that fresh Voter Identity Cards were being issued in Delhi, came to Delhi and got his Election Identity Card prepared and issued in the year 2008 at the address of the aforesaid property at Delhi though his tenant was residing therein;
- (iv) that all other identification proof of the petitioner are of Uttar Pradesh;
- (v) that since the petitioner had to extensively travel in connection with his business dealings, he in view of threat perception to himself applied for and was issued on 21st December, 2011 an arms licence from the office of

the District Magistrate, Muzaffarnagar (subsequently changed to District Prabuddha Nagar and since named as District Shamli);

(vi) that in or about November, 2012, the petitioner shifted his residence to Delhi at the aforesaid house and got his arms licence transferred to Delhi and the requisite endorsement was made by the Joint Commissioner of Delhi Police (Licensing) on the arms licence of the petitioner on 26th February, 2013;

(vii) that the petitioner prior to shifting to Delhi, on 21st September, 2012, had applied to the authorities at Uttar Pradesh to extend the territorial validity of his arms licence, also to the states of Delhi, Haryana and Uttarakhand since the petitioner was travelling to the said States also; that after the arms licence of the petitioner had been endorsed at Delhi as aforesaid, the petitioner on 5th July, 2013 got endorsement from the Uttar Pradesh authorities in response to the request dated 21st September, 2012 aforesaid, that his arms licence had been extended to the States of Delhi, Haryana and Uttarakhand also;

(viii) that the respondent no.2 Joint Commissioner of Delhi Police (Licensing) served a notice dated 19th July, 2013 asking the petitioner to

show cause why his arms licence should not be cancelled for the reason of the petitioner having obtained licence from Meerut while residing in Delhi and by misrepresenting facts and having thus violated Rules 51 and 62(3)&(4) of the Arms Rules, 1962;

(ix) that though the petitioner responded contending that he had not misrepresented but the respondent no.2 Joint Commissioner of Delhi Police (Licensing) vide order dated 5th September, 2013 cancelled the arms licence of the petitioner and directed the petitioner to deposit his weapon with the authorized arms dealer or the concerned police station;

(x) that the petitioner deposited his weapon and also preferred the statutory appeal;

(xi) that Hon'ble the Lieutenant Governor did not give any opportunity to the counsel for the petitioner to explain the facts and make arguments and has dismissed the appeal merely observing that the order of the Joint Commissioner of Delhi Police (Licensing) was fair in the facts and circumstances of the case.

4. The respondents have contested the petition by filing a counter affidavit, pleading:

(a) that a reading of Sections 3 to 5, 7, 13(3) and 14(1)&(3) of the Act indicate that a citizen has no right to obtain an arms licence for protection of his person or property; that to be entitled to an arms licence, the applicant should not only show that his case falls under Section 13(3)(a)(i) and does not fall under any of the grounds mentioned in Section 14(1)(b) but also that a good reason exists for grant of licence as envisaged under Section 13(3)(b);

(b) that under Section 14(1)(b) of the Act, the Licensing Authority is entitled to refuse arms licence where it has reason to believe that the person who has applied for the licence is unfit for a licence or where the Licensing Authority deems it necessary for the security of the public peace or for public safety, to refuse to grant such licence or for other good reason;

(c) that a right is distinct from a mere privilege; reliance is placed on ***A. Xavier Joyapaul Vs. The Special Commissioner & Commissioner of Revenue Administration*** 1994 Criminal L.J. 90, ***Syed Afzal Mehdi Vs. The***

State of Andhra Pradesh 2010 (4) ALT 377, *Kailash Nath Vs. State* AIR 1985 All 291 and *A.R. Antulay Vs. R.S. Nayak* (1988) 2 SCC 602;

(d) that the arms licence issued to the petitioner by the authorities at Uttar Pradesh was only provisionally registered with the office of the respondent no.2 Joint Commissioner of Delhi Police (Licensing) subject to verification from licence issuing authority and local police;

(e) that during verification, the Additional Commissioner of Police, Outer District, Delhi vide his letter dated 10th May, 2013 intimated that the petitioner had been residing at Delhi for the last 12-13 years and had managed to obtain the arms licence from Muzaffarnagar while residing in Delhi by misrepresenting the facts and thus violating Rules 51 and 62(3)&(4) of the Arms Rules, 1962;

(f) that during the hearing pursuant to the show cause notice issued to the petitioner, the petitioner stated that though he purchased the house in Delhi long back but started residing in it only in November, 2012;

(g) that however the voter ID produced by the petitioner as proof of residence in Delhi showed the same to have been issued in the year 2008 and

which clearly indicates that the petitioner while residing in Delhi managed to get arms licence from Uttar Pradesh by misrepresenting the facts;

(h) that it was for this reason that the arms licence of the petitioner was cancelled;

(i) that as per Rule 62(3)&(4) supra, if a person who holds licence changes his place of residence permanently or temporarily for more than thirty consecutive days, he is required to intimate the Licensing Authority of the new place of his residence within thirty days and produce his licence before the Licensing Authority of the new place for proper endorsement and after such endorsement on the licence, the licence is deemed to have been transferred to the jurisdiction of the Licensing Authority and the Licensing Authority of the new place of residence exercises all powers with respect to the said licence;

(j) that thus on the petitioner presenting the licence to the Licensing Authority at Delhi and the Licensing Authority at Delhi provisionally registering it subject to verification, the arms licence of the petitioner stood transferred to Delhi;

(k) that however during verification, it was discovered that the petitioner was residing in Delhi for the last 12-13 years and had obtained the licence from the authorities at Uttar Pradesh by misrepresenting himself to be residing in Uttar Pradesh;

(l) that from the aforesaid, it was also evident that the petitioner had failed to intimate the Licensing Authority of Delhi of his shifting to Delhi within 30 days of shifting to Delhi as he was required to under the Rules aforesaid;

(m) that as per the voter ID obtained by the petitioner at Delhi in the year 2008, the petitioner has been residing at Delhi at least since 2008;

(n) that the voter ID is a proof of residence of a particular place on the date of issue;

(o) that from the conduct of the petitioner, it is evident that he tried to beat the official system / process and got residential proofs of both States simultaneously.

5. Notice of this petition vide order dated 12th November, 2014 was issued limited to two contentions of the counsel for the petitioner; firstly that

the Joint Commissioner of Delhi Police, Licensing Unit, Delhi would not have jurisdiction to cancel a licence that was issued by District Magistrate, Shamli, Uttar Pradesh, and, secondly that a voter card can be issued even to a person who is not an ordinarily resident in the place of its issue and thus the finding in the impugned orders of the petitioner having misrepresented to the authorities at Uttar Pradesh of residing at Uttar Pradesh though residing at Delhi at least since the year 2008 is erroneous.

6. The counsel for the respondents during the hearing has handed over in Court:

(i) The letter dated 10th May, 2013 of the Additional Commissioner of Police, Outer District, Delhi to the Deputy Commissioner of Police, Licensing Unit, Delhi informing that the petitioner, on local enquiries, had been found to be living at Delhi at his aforesaid address for the last 12 to 13 years;

(ii) Documents showing that the petitioner is enrolled as a voter in the electoral roll of Delhi at the address of his aforesaid residence since 2008;

(iii) Extract of Sections 17, 18, 19 and 31 of the Representation of People Act, 1950 (RP Act);

(iv) Extract of Section 17 of the Arms Act, 1959 and Rule 62 of the Arms Rules, 1962.

7. The counsel for the petitioner though confining his arguments to the two issues aforesaid, limited to which notice of the petition was issued, but merely reiterated what is pleaded in the petition and recorded hereinabove but upon being asked to substantiate the same legally, seeks time and which, after hearing had been substantially concluded, is refused.

8. The first issue required to be adjudicated is whether the authorities at Delhi could cancel the arms licence issued to the petitioner by the authorities at Uttar Pradesh.

9. I have in this regard enquired from the counsel for the petitioner that since the petitioner also admits having shifted his residence to Delhi in November, 2012 and since the petitioner himself got his arms licence issued by authorities at Uttar Pradesh endorsed on 26th February, 2013 from the

authorities at Delhi, how can he possibly contend that the authorities at Delhi were not be the appropriate authorities with respect to the arms licence.

10. No answer is forthcoming in this regard.

11. Rule 51 of the Arms Rules requires an application for grant of licence to be presented to the Licensing Authority having jurisdiction in respect of the place where the applicant resides or has his occupation. Rule 51A provides that the applicant shall not suppress any factual information or furnish any false or wrong information in the application form. Rule 62(3), on which the counsel for the respondents has placed reliance, provides that if a person who holds a licence changes his place of residence, permanently or temporarily for more than thirty consecutive days and carries with him the weapon covered by the licence, to a place other than indicated in column 2 of the licence, he shall within thirty days of such change send intimation about such change to the Licensing Authority of the place of his new residence as well as to the authority which granted the licence or last renewed it and shall, on demand, produce the licence and the weapon to the Licensing Authority of the place of new residence for making necessary entry in the licence to indicate therein the particulars of the new residence of

the licensee. It was in pursuance to the said Rules that the petitioner presented his licence with weapon to the authorities at Delhi, albeit after 30 days and the authorities at Delhi made the endorsement dated 26th February, 2013 on the licence of the petitioner. Rule 62(4) provides that on such change of residence and after such endorsement on the licence, the said licence shall be deemed to have been transferred to the jurisdiction of the Licensing Authority and Renewing Authority of the new place of residence and such authority shall be the Licensing Authority and the Renewing Authority in relation to the said licence for the purpose of the Arms Act and the Arms Rules.

12. In the face of the aforesaid facts and the legal provisions, I fail to see on what basis, it is contended by the counsel for the petitioner that the Licensing Authority at Delhi had no jurisdiction to cancel the licence issued by the Licensing Authority at Uttar Pradesh. Upon the petitioner admittedly changing his residence in November, 2012 and presenting the licence along with weapon to the Licensing Authority at Delhi for endorsement under Rule 62(3) and an endorsement thereon being made by the Licensing Authority at Delhi, the Licensing Authority at Delhi became the Licensing Authority with respect to the Licence held by the petitioner and the Licensing Authority of

the State of Uttar Pradesh ceased to be the Licensing Authority qua the said licence.

13. In fact, the licence issued to the petitioner and which was endorsed by the Licensing Authority at Delhi was valid till 21st December, 2014 only. I had thus enquired from the counsel for the petitioner, whether not the matter was infructuous. The counsel for the petitioner drew attention to the letter dated 5th July, 2013 of the Licensing Authority at Uttar Pradesh extending the validity of the licence till 4th July, 2016.

14. The aforesaid shows that the petitioner, even after having his licence endorsed at Delhi on 24th February, 2013, did not inform the Licensing Authority at Uttar Pradesh and obtained renewal / extension of the licence therefrom till 4th July, 2016 when after the endorsement at Delhi, the Licensing Authority at Uttar Pradesh was left with no jurisdiction to grant such extension / renewal of the licence of the petitioner, having ceased to be the Licensing Authority. It is quite evident therefrom that the reasoning given in the impugned orders of the petitioner being guilty of misrepresentation and the plea in the counter affidavit of the respondents of the petitioner, in abuse of the process, dealing with authorities of two States

claiming himself to be resident of both is correct and the petitioner being guilty of such conduct is not entitled to any relief in the exercise of equitable jurisdiction under Article 226 of the Constitution of India and the petition is liable to be dismissed on this ground alone.

15. I had also enquired from the counsel for the petitioner as to in exercise of what power, the Licensing Authority at Uttar Pradesh had extended the jurisdiction of the licence from that earlier limited to State of Uttar Pradesh to the States of Delhi, Haryana and Uttarakhand also.

16. However, the counsel for the petitioner again sought adjournment to reply thereto and which adjournment is refused.

17. There is thus no merit in the first of the aforesaid contentions of the petitioner, of the cancellation effected by the Licensing Authorities at Delhi of the licence originally issued by the Licensing Authority at Uttar Pradesh to be without jurisdiction. Reliance can be made to ***Bhism Deo Vs. The Commissioner, Jhansi Division*** MANU/UP/0825/1982 and ***Rameshwar Singh Vs. State of Uttar Pradesh*** MANU/UP/1338/2007.

18. As far as the second contention of the counsel for the petitioner is concerned, though it is boldly contended that voter card at Delhi can be obtained by a person who is not a resident of Delhi but Section 19 of the RP Act relied upon by the counsel for the respondents *inter alia* provides that a person who is ordinarily resident in a constituency shall be entitled to be registered in the electoral roll of that constituency. Section 17 provides that no person shall be registered in the electoral roll of more than one constituency and Section 18 provides that no person shall be entitled to be registered in the electoral roll of more than one constituency. Section 31 of the said Act makes a person who in connection with preparation, revision or correction of an electoral roll or in connection with inclusion or exclusion of an electoral roll makes a statement or declaration in writing which is false shall be punishable with imprisonment extending to one year or with fine or with both.

19. It is thus quite evident that the petitioner, if had been ordinarily resident of Uttar Pradesh in 2008, as he now claims to be, ought not and could not have applied for a voter ID card at Delhi and if was an ordinary resident of Delhi as he declared himself while obtaining the Voter card in 2008, could not have declared himself to be an ordinary resident of Uttar

Pradesh to the authorities under the Arms Act while obtaining the arms licence from the said authorities in the year 2011.

20. The petitioner is indeed found to be a person who has no regard for truth and who does not consider himself bound by any laws, rules and regulations. No error is found in the decision of the Licensing Authorities under the Arms Act holding the petitioner not entitled to the privilege of an arms licence under the Arms Act. Section 17 of the Arms Act empowering the licencing authority to *inter alia* suspend and / or revive arms licence vests the licencing authority with wide discretion. Reference can be made to ***Jodh Singh Vs. State of Rajasthan*** MANU/RH/1020/2008 and ***B. Balraj Goud Vs. Government of Andhra Pradesh*** MANU/AP/1249/2002.

21. A Division Bench of this Court 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 rights 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; non-grant of such privilege does not involve adjudication of right of individual nor does it entail civil consequences. Another Division Bench of this Court in ***Parveen Kumar Beniwal Vs. Government of NCT of Delhi*** MANU/DE/1304/2015 held that a citizen cannot assert a right to hold a firearm on the ground of threat perception. Reference may also be made to a judgment of the Division Bench of the Bombay High Court in ***Devendra Tukaram Katke Vs. The State of Maharashtra*** MANU/MH/0271/2009 holding 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.

22. There is thus no merit in the petition.

Dismissed.

I refrain from imposing any costs.

RAJIV SAHAI ENDLAW, J.

DECEMBER 22, 2015

‘gsr’

(corrected & released on 9th January, 2016)