

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

Judgment Reserved on: February 15, 2016
% *Judgment Delivered on: February 23, 2016*

+ **W.P.(CRL) 490/2015**

MOHD UMAR

..... Petitioner

Through: Mr.S.D.Ansari, Advocate with
Mr.I.Ahmed, Advocate with petitioner
in person

versus

STATE (GOVT OF NCT OF DELHI) & ORS Respondents

Through: Mr.Rahul Mehra, Standing Counsel
for State with Mr.Shekhar Budakoti
and Mr.Sanyog Bahadur, Advocates

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J.

W.P.(CRL) 490/2015

1. By way of this writ petition, the petitioner has impugned the order dated 3rd December, 2014 passed by Hon'ble Lt.Governor, Delhi whereby the appeal filed him under Section 18 of Arms Act against the order dated 19th September, 2014 cancelling his arms license, was rejected.
2. Notice of this petition was issued to the respondent. Status report has been filed by the State.

3. On behalf of the petitioner, Mr.S.D.Ansari, Advocate has submitted that the petitioner is holder of the Arm Licence No.NNSB/12/1998/187 endorsed with 32 bore Revolver No.A-7152 having been issued to him after inquiry following due procedure. He further submits that petitioner has been victimized because of the complaint made by Ansar Ahmad to take revenge. It is submitted that Ansar Ahmad was involved in raising illegal and unauthorized construction.

4. The petitioner had filed Civil Writ Petition No. 242/2012 before this Court for issuance of direction to the MCD to demolish the said illegal construction. In the said writ petition MCD was directed to take necessary action in the matter. Thereafter, in retaliation, Ansar Ahmad filed a false complaint against him and a show cause notice was issued to the petitioner which was duly replied by him. But without giving any appropriate opportunity to him to explain the position, his license was cancelled. The appeal filed by the petitioner before Hon'ble Lt.Governor, Delhi has also been dismissed by a non-speaking order without going into the merits of the case.

5. Mr.S.D.Ansari, Advocate has submitted that one of the grounds for cancellation of license is a photograph wherein the petitioner has been shown holding the weapon in his hand in some marriage function and the photograph is about three years old. There is no complaint against the petitioner of extending any threat to anyone or misuse of weapon. He has never violated any condition of the license. Hence the impugned order needs to be set aside.

6. Mr.Rahul Mehra, Standing Counsel appearing on behalf of the State has, at the outset, drawn the attention of this Court to the status report wherein following facts are mentioned:-

(i) On 22nd March, 2013, a complaint was received from Resident Welfare Association (Regd) DDA Flat Sarai Khalil that the petitioner displayed his licensed revolver and extended threats to persons living in the vicinity of DDA Flats, Sarai Khalil, Sadar Bazar, Delhi. The petitioner was caught on the camera showing his revolver during a marriage ceremony which was confirmed in the report No.885/SHO/SB dated 11th March, 2013 by the SHO/Sadar Bazar, Delhi.

(ii) While filing this writ petition the petitioner has concealed the fact of cancellation of his license earlier vide office order No.48913-16/Addl.CP./Lic/Arms/SCN (ND) dated 14.10.2011 on his involvement in case FIR No.208/2004 u/s 304/308/408/34 IPC PS Sadar Bazar.

7. Mr.Rahul Mehra, Standing Counsel for the State submits that the Arms License of the petitioner was cancelled on 19th September, 2014 directing him to deposit the weapon with the closest Police Station or authorized Arms Dealer and deposit his Arms License Booklet immediately which he failed to comply. On 27th September, 2014 he deposited his weapon with Shamsuddin Gun House, Arms & Ammunition Dealer, 1231, Raqab Ganj, Near Delite Cinema, New Delhi-1100002 for repair without disclosing that his Arms License has been cancelled.

8. Learned Standing Counsel for the State has submitted that grant of license is a statutory privilege and not a matter of fundamental right. The petitioner was not found suitable to hold an Arms License and the assessment in this regard by the Licensing Authority which was approved by

the Appellate Authority may not be interfered with by this Court in writ jurisdiction. In support of above contention he has relied upon decision passed by Division Bench of this Court in Parveen Kumar Beniwal Vs. Govt. of NCT of Delhi & Anr., LPA 41/2015.

9. The first contention on behalf of the petitioner is that he has been victimized because of his zeal to check unauthorized construction, at the behest of the persons who were raising unauthorized construction. Mr.S.D.Ansari, learned counsel for the petitioner in this regard has referred to copy of the order dated 15th January, 2013 passed in W.P.(C) 242/2013.

10. Suffice it to note here that litigation between the petitioner and Ansar Ahmad may be a reason for ill-will but definitely it cannot be a criteria for the Licensing Authority to assess the suitability of a person to hold an Arms License. Even the impugned order does not disclose the cancellation of the license on this ground.

11. Another contention made on behalf of the petitioner that he has never violated the conditions of the Arms License needs to be rejected outrightly as he does not dispute that in a marriage ceremony he was clicked holding weapon in his hand. Whether the photograph is three years old or of the recent past is immaterial. It is necessary to note here that show cause notice dated 2nd July, 2013 was served on the petitioner wherein it was specifically mentioned that he displayed his revolver during marriage ceremony which fact was confirmed by the SHO, Sadar Bazar in reply to the show cause notice. In reply to the show cause notice, the entire focus is on the social status of the petitioner, turn over of his company. W.P.(C) No. 242/2013 was filed by him in respect of unauthorized construction. Issue of two Residents

Welfare Association, one of them being described as fictitious and making complaint against the petitioner was highlighted.

12. The Joint Commissioner of Police (Licensing Unit) has cancelled the license of the petitioner after considering the show cause notice served on him and the reply submitted thereto as well the report submitted by the SHO PS Sadar Bazar and the complaint made by the Resident Welfare Association (Regd.) DDA Flat Sarai Khalil. The operative part of the order recording reasons for cancelling the license by Joint Commissioner of Police is as under:-

“The local police in its report clearly recommended for cancellation of your Arms Licence. They further stated that Kalandara U/s 107/150 Cr.P.C. was also registered against you and also enclosed a photograph in which you were showing your weapon during marriage ceremony. You were also heard in person on 15.09.2014 and stated the same version which you mentioned in the reply. The report of local police is unequivocal and clear. The pleas/reasons taken by you are an attempt to cover up. As such, considering the totality of the circumstances, it is considered that you are not a fit person to hold the Arms Licence in the interest of public safety at large.”

13. The scope of judicial review in such type of matters has been considered in various decisions.

14. 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.

15. In another decision dated 15th January, 2014 by 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 it was held (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.

16. A Division Bench of this Court has concurred with the above view taken by the Allahabad High Court, in LPA No.41/2015.

17. It is surprising that while challenging the order cancelling the license the petitioner preferred to conceal the fact that his license was cancelled earlier also on his involvement in FIR No.208/2004 u/s 304/308/408/34 IPC registered at PS Sadar Bazar and it was restored by the Appellate Authority giving opportunity to the Licensing Authority to cancel the Arms License of the petitioner in case of conviction of the petitioner in criminal case. Status report also records that the petitioner is undergoing trial in the said FIR. The

concealment of the pendency of the criminal case against the petitioner cannot be termed as an inadvertent omission.

18. The petitioner has claimed that he has not been given any opportunity of being heard but the record says that show cause notice was served upon him which was duly replied by him. The status report says that he was also heard in person on 15th September, 2014 by Joint C.P./Licensing and he stated the same version which he mentioned in the reply.

19. The petitioner deliberately remained silent about the accusations made in the show cause notice by simply stating that 'I have not committed any acts as complained'.

20. However, in Para No.11(E) of the writ petition, his photograph with revolver in his hand in a marriage has been projected as under:-

"The photographs showing revolver in the hands of petitioner was in marriage occasion which cannot be termed as threat or offence. Even otherwise, there has been no allegation stating that the petitioner had threatened or fired. Just to keep revolver in hand and to raise hand without pointing the same to any one, cannot be said that it was a threat to any one. In marriage occasion such type of amusement is generally done without causing any loss to any one."

21. The Appellate Authority i.e. Hon'ble Lt.Governor, Delhi dismissed the appeal for the reason that he considered the opinion passed by the Licensing Authority to be fair and finding no reason to interfere with it. Since the Appellate Authority concurred with the order cancelling the license, there was hardly any need to record separate reasons/additional reasons in the matter. Thus, the petitioner cannot get any relief on the ground that the order passed by the Appellate Authority is non-speaking order.

22. The grounds on which the Licensing Authority has cancelled the arms license of the petitioner is based on material which has been duly considered by the Appellate Authority as well. The reasons recorded while cancelling the license reveal that the petitioner has a tendency to violate the law. Earlier he was involved in a criminal case when his license was cancelled but subsequently restored by the Appellate Authority. Thereafter also, he was photographed showing revolver in his hand in some marriage party. Prevention action under Section 107/150 CrPC has also been initiated against him. This material was considered sufficient by the Licensing Authority to assess the suitability of the petitioner to hold an arms license. I am of the opinion that there is no error in the perception of the Licensing Authority and the Appellate Authority in recording that the petitioner was not a fit person to hold an arms license for a fire arm.

23. Finding no illegality or perversity in the impugned orders, the writ petition is dismissed.

CrI.M.A. No.3484/2015

Dismissed.

PRATIBHA RANI, J.

FEBRUARY 23, 2016

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