

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CWP 6404 of 2014

Date of Decision: March 20, 2017

Shamsher Singh

.....Petitioner

Vs.

Union of India and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.Vivek Khatri, Advocate
for the petitioner.

Mr. Hamreet Singh Oberoi, Advocate for
Mr. Lokesh Narang, Senior Panel counsel for UOI

Mr. Indresh Goel, Addl.A.G., Haryana.

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M.M.S. BEDI, J.

Petitioner through instant petition under Articles 226/ 227 of the Constitution of India has sought a writ in the nature of mandamus directing respondent No.1 to issue a new Prohibited Bore Arms Licence to the petitioner as well as permitting the transferring of Prohibited Bore 455 Bore Revolver in the name of petitioner under the Family Heirloom Policy. The petitioner has averred that his grand-father, namely, Ganga Bishan held

a Prohibited Bore Arms Licence and he owned the prohibited bore 455 bore revolver, hereafter referred to as the “prohibited bore revolver” bearing SH No. 447050. The said revolver has been deposited by the father of the petitioner with the Arms Company after the death of petitioner’s grandfather. A copy of the deposit receipt dated February 20, 2008 has been appended with the petition as annexure P-1. The petitioner submitted a letter to respondent No.3 District Magistrate, Hisar for transferring above said revolver in the name of the petitioner under the Family Heirloom Policy, along with all the relevant documents. On the basis of said application, respondent No.3 issued a registered letter dated October 30, 2008 to respondent No.2, i.e. the State of Haryana through Financial Commissioner-cum-Secretary. In the said letter, it was informed that as per the notification of the Government of India dated February 28, 1995, if the licence holder has expired then the Arms licence could be transferred to the legal heir of the licence holder. Since the petitioner was not the legal heir of the deceased, he was ordered to appear before the District Magistrate on September 3, 2008. He appeared on September 3, 2008 and the District Magistrate, Hisar had recommended that there was no objection in regard to the transfer of the arms licence to the grand-son as in the similar types of different cases, the Government had issued Prohibited Bore Arms Licence. The Financial Commissioner asked the District Magistrate, Hisar to obtain two passport size photographs of the petitioner along with an affidavit of all other legal heirs along with their no objection certificate, vide letter

annexure P-3 dated October 30, 2008. The petitioner has furnished the requisite documents vide annexure P-4 dated November 19, 2008 before the District Magistrate. The Financial Commissioner-cum-Principal Secretary has sent a communication annexure P-5 dated February 27, 2012 to the Secretary, Government of India recommending the issuance of new Prohibited Bore Arms Licence to the petitioner. The petitioner sent a legal notice dated March 25, 2013, annexure P-6 to the District Magistrate, Commissioner and Union of India for issuance of licence. In response to the legal notice, counsel for the petitioner was informed that the case of the petitioner has been recommended to the Secretary, Government of India, Home Department as such thereafter no action was to be taken by the District Magistrate or the Haryana Government, as the powers of issuance of Prohibited Bore Arms Licence is with the Government of India, New Delhi. As the petitioner did not receive any reply, he submitted a reminder annexure P-9 dated May 23, 2013. When no heed was paid on the request and representation of the petitioner, the petitioner again served a legal notice to the respondents on July 5, 2013 vide annexure P-10. Thereafter no reply had been received from respondent No.1 to respondent No.2, then again respondent No.2 issued a reminder on July 19, 2013 to respondent No.1 in regard to cited subject. Copy of the reminder dated July 19, 2013 has been appended with the petition as annexure P-11. Petitioner again sent a reminder annexure P-12 dated October 27, 2013 but till date no action has been taken as such the petitioner has filed the present writ petition for a

direction to the respondents to issue Prohibited Bore Arms Licence and permission to transfer the same under the Family Heirloom Policy.

In the reply filed by the District Magistrate, Hisar, respondent No.3, it has clarified that all the formalities of the District Magistrate had been completed and the matter is now pending before respondent No.1 for further necessary action. The issuance of legal notice by the Advocate of the petitioner has been admitted.

Despite repeated opportunities, last opportunity was granted to respondent No.1- Union of India to file reply vide order dated December 19, 2016 subject to payment of cost of Rs.20000/-. Neither the cost had been paid nor written statement was filed.

In view of the above circumstances, there was no option left with this Court to decide the case without the written statement of Union of India.

The Arms Act defines 'Prohibited Arms' as arms which are automatic or semi automatic in nature fall in the category of Prohibited Bore (PB) Arms and the remaining arms which are non-automatic or bolt action type are covered under the category of Non-Prohibited Bore (NPB) Arms. Prior to 1987, licences for acquisition and possession of Prohibited Bore (PB) and Non Prohibited Bore (NPB) firearms were issued by the District Magistrate/ State Government concerned. But after 1987, powers to issue licences for Prohibited Bore (PB) Arms were withdrawn from the State Government/ District Magistrate concerned as such the licences for

Prohibited Bore Weapons are issued by Central Government alone but the licences of Non Prohibited Bore Weapons (NPB) continued to be issued by the District Magistrate/ State Government concerned. The policy regarding grant of Prohibited Bore weapons as collected from the Google network indicate that the applications for the grant of Arms licence for Prohibited Bore weapons can be considered from the different categories of persons as follows:-

“6. Grant of Arms licences for PB Weapons –

Applications for grant of arms licence for PB weapons from citizens of India facing grave and imminent threat to their lives are considered by Central Government. It has been decided that applications for grant of arms licence for PB weapons may be considered from the following category of persons alone:-

- (i) Those persons who face grave and imminent threat to their lives by mere reason of being residents of a geographical area (or areas) where terrorists are most active and/or are held to be prime ‘targets’ in the eyes of terrorists and/ or are known to be inimical to the aims and objects of the terrorists and as such face danger to their lives.

- (ii) Those Government officials who by virtue of the office occupied by them and/or the nature of duties performed by them and/or in due discharge of their official duty have made themselves targets in the eyes of terrorists and are vulnerable (prone) to terrorist attack.
- (iii) Those MPs and MLAs including non-officials/private persons who by virtue of having been closely and/or actively associated with antiterrorist programmes and policies of the Government or by mere reason of their holding views, political or otherwise, not to the liking of the terrorists, have rendered themselves open to attack by the terrorists.
- (iv) The family members/kith and kin of those who by the very nature of their duties or performance (past or present) or positions occupied in the Government (past or present) or even otherwise for known/unknown reasons have been rendered vulnerable and have come to be regarded by the terrorists as fit targets for elimination.”

For grant of Arms license under Family Heirloom Policy, the following provisions have been made:-

“9. Grant of Arms licences under family Heirloom -

Transfer of PB/ NPB weapons of an existing licensee to his/her legal heir is allowed, if the licensee had held the weapon for a period of 25 years or more or the licensee has attained the age of 70 years or more. Applications for transfer of PB and NPB weapons are considered, respectively, by MHA and State Government/DM, subject to the condition that the legal heir should be eligible to get the license under the Arms Act and should be capable of handling the weapon. At present, the applications for transfer of licence in favour of son/ daughter/wife/husband, as per wish of the licensee during his life time, are considered under the scope of “legal heir” in family heirloom cases. After the death of the licensee, transfer of weapon in favour of son/daughter/wife/ husband is also considered subject to no objection from other legal heirs. In some cases, requests have been received from licensees to allow transfer of weapon in favour of son-in-law, daughter-in-law, brother, sister, or other relation such as nephew etc. on the ground that son/daughter is settled abroad and/or not willing/not in a position to acquire the weapon or the licensee does not have any son/daughter of his own. It

has accordingly been decided to widen the scope of “legal heir” to include son-in-law, daughter-in-law, brother and sister of the licensee on the merits of each case, in addition to son, daughter, wife and husband, to whom the licensee will be free to transfer his weapon as per his wish during his life time. After the death of the licensee, the transfer of weapon may also be allowed in favour of son-in-law/ daughter-in-law/ brother/sister on merits subject to “No objection Certificate” from other legal heirs.”

The petitioner appears to be entitled to the grant of Arms licence under the family Heirloom Policy. No reply has been filed by Union of India.

Taking into consideration the fact that the petitioner has got an enforceable legal right to acquire the property from his grand-father subject to the licence issued by Union of India, a direction is issued that the petitioner may be granted Arms Licence by the Ministry of Home Affairs (Arms Section) pursuant to the request sent by the District Magistrate vide annexures P-8 and P-9. In case the petitioner is ineligible for any other reason, a speaking order may be passed mentioning the reasons for refusal of the licence of the Prohibited Bore to the petitioner. It will be appreciated in case the final action is taken as per law within a period of three months after the receipt of a certified copy of the order.

Allowed in the aforesaid terms.

March 20, 2017
sanjay

(M.M.S.BEDI)
JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether reportable:	Yes/No.