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

+ **W.P.(CRL) 58/2017**

BISHAMBER DAYAL CHAUHAN

..... Petitioner

Through: Mr. Zaffar Sadiq with Mr. R.K. Giri,
Advocates

versus

LT GOVERNOR, DELHI & ORS

..... Respondent

Through: Mr. Sanjay Lao, ASC with Mr.
Siddarth Sindhu, Adv. with SI Kamal
Kishore

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

09.01.2017

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Crl.M.A. No. 243/2017

Exemption allowed, subject to all just exceptions. The application stands disposed of.

W.P.(CRL) 58/2017

Issue notice. Notice is accepted on behalf of the State. The petitioner has preferred the present writ petition to seek a writ of certiorari for quashing the order dated 05.10.2016 passed respondent no.1 in Appeal No.71/2016 filed by the petitioner under Section 18 of the Arms Act, 1962. The petitioner also seeks quashing of the order dated 27.04.2016 issued by respondent no.2 i.e. Joint Commissioner of Police, Licensing Unit cancelling the arms

license bearing sl. No.NWAN-110025- MWSB11/199/5 for 0.32 bore revolver issued to the petitioner. The petitioner seeks a mandamus to respondent nos.2 and 3 i.e. Deputy Commissioner of Police (Licensing) to revoke the cancellation of arms license of the petitioner and for issuance of fresh arms license and release of the weapon of the petitioner.

The case of the petitioner is that in the year 1989, he was issued an arms license for gun on 09.12.1989. At that stage, there was no criminal case pending against the petitioner. The petitioner states that his brother was murdered and on the petitioner's request, his license for gun was converted into license for revolver on 04.10.1990 for 0.32 bore revolver, which earlier belonged to his deceased brother. The said license issued on 04.10.1990 was subsequently renewed on several occasions.

On 15.03.2015, respondent no.3 issued a show cause notice to the petitioner requiring him to show cause as to why his arms license should not be cancelled in view of his non-disclosure of his involvement in criminal cases. The four cases in which the petitioner was involved were:

- i) Case FIR No.354/90 u/s 302/120B IPC PS J. Puri, New Delhi.
- ii) Case FIR No.390/90 u/s 25/54/59 A Act PS Moti Nagar, New Delhi.
- iii) Case FIR No.223/98 u/s 452/506/427/34 PS PS Adarsh Nagar, New Delhi.
- iv) 71/99 u/s 452/342/365/506 IPC PS Adarsh Nagar, New Delhi.

The petitioner has sent his reply to the show cause notice. He claimed to have sent to the concerned police officials and authorities information with regard to theft of his revolver and his implication in the aforesaid case, namely, FIR 354/1990 under Section 302/120B IPC registered at PS

Jahangirpuri. The petitioner also claims to have sent a reply on 02.04.2005 intimating to the authorities about his acquittal in case FIR 354/1990. He also claimed to have informed with regard to the pendency of the aforesaid three other cases.

The petitioner's license was suspended on 16.01.2006 and till the disposal of the criminal cases, he was directed to deposit his weapon at the nearest police station or with the authorised arms dealer. The petitioner, accordingly, deposited the fire arms on 17.02.2006.

The case of the petitioner is that he has been acquitted on 29.02.2016 and thus, there is not a single conviction against him. Consequently, the petitioner moved an application on 29.02.2016 to DCP Licensing for renewal of his license and release of the fire arm.

By the impugned order dated 27.04.2016, the Joint Commissioner of Police, Licensing Unit, Delhi has confirmed the show cause notice issued to the petitioner and cancelled the arms license issued to the petitioner with immediate effect. His appeal has also been dismissed by the Hon'ble Lt. Governor on 05.10.2016. These two orders have been impugned in this writ petition.

The submission of learned counsel for the petitioner is that the petitioner had given the intimation with regard to his involvement in the aforesaid cases. In this regard, he places reliance on the communication issued to the Commissioner of Police on 09.11.1992 with copies to the ACP (NW), Delhi; the SHO PS Jahangirpuri and DCP (NW) Ashok Vihar as well as the communication allegedly sent to the DCP Licensing on 01.11.1999 with copies to the Hon'ble Lt. Governor, Commissioner of Police, Home Secretary – Union of India, DCP Licensing and DCP (NW).

A perusal of the communication dated 09.11.1992 would show that the same was not even purported to have been sent to the DCP Licensing. The same bears an endorsement of the Addl. Commissioner of Police on 09.11.1992. There is nothing to show that the said communication was sent to any of the other authorities to whom the said communication was purportedly addressed or copied. The communication dated 01.11.1999 allegedly sent by the petitioner has been purportedly sent by UPC and there is no acknowledgment of the said communication by the authorities to whom the same was purportedly sent.

The petitioner cannot deny the fact that when he initially obtained the license for revolver in question on 04.10.1990, the FIR No.354/1990 had already been registered at PS Jahangirpuri. By then, the second FIR No.390/1990 has also been registered under the Arms Act. Had the said facts been disclosed, the petitioner would not have been issued the license on 04.10.1990 in the first place. Thus, the petitioner obtained the said license by suppression and misrepresentation. Such a license was thus *void abinitio*, since it was premised on misrepresentation and concealment. Even when the license was renewed from time to time, the petitioner did not communicate his involvement in the aforesaid cases to the concerned authorities. Merely because the petitioner may have been acquitted at a subsequent stage in the cases registered against him, the same does not entitle the petitioner to seek revocation of the show cause notice and the cancellation orders.

Mr. Lao has tendered in court a copy of the judgment rendered by a Division Bench of this court in ***Parveen Kumar Beniwal v. GNCTD & Anr.*** in LPA No.41/2015 decided on 29.04.2015. In the said decision, the

Division Bench, inter alia, observed:

“Once the rules require an applicant for arms licence / renewal thereof to disclose his previous involvement in a criminal case alongwith the particulars, acquittal is no defence to such non-disclosure. It is for the licensing authority to judge the effect of such acquittal and acquittal in a criminal case does not take away the duty of the applicant for arms licence / renewal thereof to disclose the same. As aforesaid, the statute has made mere non-disclosure, a ground for revocation of licence. The Supreme Court in A.P. Public Service Commission Vs. Koneti Venkateswarulu (2005) 7 SCC 177 while following Kendriya Vidyalaya Sangathan supra negated the argument that there was no mala fide intention in not giving full particulars by holding that of the purpose for which the information is called, the authority seeking the information is the ultimate judge and it is not open to the candidate to sit in judgment about the relevance of the information called and decide to supply it or not. Similarly, the plea of inadvertence was negated by holding that the said plea taken as an excuse for suppression / false declaration for the first time after the truth was discovered is unacceptable.”

In view of the aforesaid position, there is absolutely no merit in this petition and the same is, accordingly, dismissed with costs of Rs.25,000/-. Cost be deposited with the Delhi Legal Aid Services Authority within four weeks and the receipt be placed before the court. In case the costs are not paid, the matter be placed before the Court.

VIPIN SANGHI, J

JANUARY 09, 2017

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