

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.1828 of 2017 (O&M)

Date of Decision:18.10.2019

Kirat Pal Singh

... Petitioner

Versus

UOI and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.HPS Ishar, Advocate for the petitioner

Mr.Rajiv Verma, Advocate for UOI-respondent no.1

Mr.Kapil Bansal, DAG, Haryana

RAJIV NARAIN RAINA, J.

1. An interesting issue has been raised by an IPS Officer of the Haryana Cadre in this case claiming a .38 bore revolver belonging to his late father as an heirloom by inheritance and succession and transfer of the prohibited/restricted bore handgun in his name. The petitioner's father Harnam Singh was an elected MLA from Shahabad Constituency of District Kurukshetra, Haryana. On 9.4.1988, the family of the petitioner was attacked by terrorists belonging to Babbar Khalsa International (BKI) at their residence. In the unfortunate assault, the petitioner's brother Khushdev Singh aged 30, sister-in-law Gurpreet Kaur aged 26 and cousin Gurdeep Singh aged 26 years died on the spot whereas father Harnam Singh, mother Jaswant Kaur and maternal uncle Hira Singh received bullet injuries while giving a tough fight to the assailants. Petitioner's mother Jaswant Kaur had got hold of one terrorist with his hair and another

terrorist fired on her during which she received four bullet injuries, but survived. One terrorist died from a bullet injury by his companion. After the incident, the family was honoured with five Shaurya Chakras.

2. The terrorist attack was reviewed for security purposes by the Ministry of Home Affairs, Government of India and that is how the prohibited .38 bore revolver was licensed to Harnam Singh on 17.8.1990. Harnam Singh possessed his weapon till his death on 19.11.2013.

3. After the death of Harnam Singh, the petitioner applied for transfer of arms licence in his name under the family heirloom policy to the Principal Secretary (Home) Department, Haryana. As per the Ministry of Home Affairs Guidelines/Circular No.V-11016/16/2009-Arms dated 6.4.2010/31.3.2010 addressed to the Secretary (Home Department) of all States and Union Territories, informing the State Governments they have no power to issue an arms licence for a prohibited or restricted bore firearm and the decision vests exclusively with the Home Secretary, Government of India in the Ministry of Home Affairs, New Delhi.

4. Paragraph III of the aforesaid Guidelines/Circular inter alia deals with grant of arms licence under family heirloom to the following effect:-

“III) Grant of Licence under Family Heirloom:

Attention is invited to the instructions contained in

MHA's letter No.V-11019/23/95-Arms dated

28.2.1995 regarding grant of licence to the legal

heir of existing licensee, after the death of the

licensee or the licensee has attained the age of 70 years or had held the weapon for 25 years or more.

Normally, the scope of legal heirs is extended to husband, wife, son & daughter. It has been decided to extend the scope of legal heirship to the son-in-law, daughter-in-law, brother and sister of the existing licensee. Accordingly, the applications for transfer of weapons from the said categories of relatives of the licensee may also be considered subject to other conditions stipulated in the said letter.”

5. Petitioner’s request was dealt with by the Additional Chief Secretary, department of Home Affairs, Government of Haryana forwarding the application to the Arms Section, MHA-respondent no.1 along with its no objection to grant of license vide its letter dated 25.3.2015 (Annex. P-4).

6. Respondent no.1 rejected the application of the petitioner without citing any reason vide the impugned order dated 31.3.2016 (Annex. P-5).

7. Feeling aggrieved by the impugned order, the petitioner made an application to respondent no.1 under the Right to Information Act, 2005 on 22.7.2016 asking for supply of copy of the rule/statute/or provision and reasons under which the application was rejected. Respondent no.1 sent reply dated 4.8.2016 but did not provide any rule or reason for the rejection and simply disposed of the application of the petitioner citing MHA guidelines

8. Having read the guideline, the petitioner again approached the respondents on 18.8.2016 stating that his case is covered under the guidelines cited, but request did not elicit any response. This was the background in which the petition was filed seeking directions in favour of the petitioner for transfer/renewal of licence and against the Central Government in the Ministry of Home affairs.

9. I have heard learned counsel for the parties and have perused the paper-book with their assistance.

10. Learned counsel for the petitioner contends that the petitioner has a right to fair consideration of his claim for renewal/transfer of arms licence which is a valuable right coming from his father. It can be refused only on cogent and valid grounds. Denial of licence in the circumstances is not backed by any cogent reason and the application was declined arbitrarily without affording any opportunity of hearing to the petitioner which is against the principles of natural justice and in infringement of rights under Article 14 of the Constitution of India. If the claim of the petitioner falls in the family heirloom policy it cannot be abrogated illegally and in a whimsical, arbitrary and unreasonable manner. Every order which affects the right of parties requires due consideration with reasons recorded in writing referring to the material on which the decision is based so that in case of judicial scrutiny, the High Court would know the reasons which have weighed in the mind of the competent authority in declining or accepting the prayer.

11. When this matter came up for hearing on 26.9.2018, respondent no.1 stated that the licence for the weapon in question is

for a .38 prohibited bore weapon which was issued in original in the name of father of the petitioner on the basis of threat perception assessed by the then competent authority. There is no report with regard to threat perception qua the petitioner by the competent authority and thus the application cannot be processed. As and when such a report is received, the same will be examined as per law.

12. While posting the case for hearing to the next date, this court ordered that in the meantime, the petitioner would represent to the State with regard to objection raised by the learned counsel for respondent no.1 and report of the competent authority thereupon be brought on record a week prior to the adjourned date. On the next date, State counsel prayed for more time to produce the report in terms of the order dated 26.9.2018. Thereupon, this court adjourned the matter for the needful and it was ordered that in case the needful is not done by the next date, authority concerned shall remain present in court along with the relevant record. Thereafter the case was adjourned for two dates, but the position remained the same.

13. On 17.10.2019, Haryana State counsel filed a short affidavit of Surender Singh, DSP, Shahabad (M), Kurukshetra which was taken on record. On the said date of hearing, counsel representing the Central Government informed that Arms Rules, 2016 pertaining to the heirlooms policy have been promulgated on the basis of which petitioner has no case for transfer of a .38 prohibited bore handgun from father to son. He was directed to produce the said rules by 18.10.2019 to be received on email and printed form for production in Court. The matter was adjourned for today. In terms of the order dated 17.10.2019, e-mail dated 18.10.2019 has been

received and produced in court which is taken on record as Mark “A”.

14. The aforesaid email is stated to be in continuation of trailing mail and telephonic discussion with counsel on 17.10.2019 on the subject. The sender of the email is Karun, Legal Consultant, Ministry of Home Affairs wherein it is stated that when the applicant had made his application, the Arms Rules, 1962 were in force. The case on examination was rejected by the competent authority as the petitioner did not have threat to his life which could justify issue of Arms Licence of prohibited bore weapon. The decision of the competent authority was conveyed to him vide letter no.11019/42/2015-Arms dated 31st March, 2016. However, the letter with copy to counsel for the Central Government Sh. Rajiv Verma, Advocate informs that the Ministry would have no objection, if the applicant applies afresh for the transfer of weapon on legal heir basis, as per the relevant provisions of the extant Arms Rules, 2016.

15. Arms Rules, 2016 came into force superseding the Arms Rules, 1962. Rule 25 of the Arms Act, 1959 deals with grant of licence to legal heirs. It would be relevant to advert to the short affidavit of Surender Singh, DSP referred to above. In para 3 of the affidavit, it has been averred that the local police has no objection if the licence dated 17.8.1990 is transferred in the name of the petitioner. Paragraph 4 of the affidavit records that during investigation by the police, President Municipal Committee, Shahabad (M) and Mewa Devi M.C. Ward No.14 Municipal Committee, Shahabad (M) also verified that some terrorists group

have given threats to the petitioner. A copy of the police verification is annexed with the affidavit as Annex. R-1.

16. Paragraph 6 of the aforesaid affidavit records that the local police is ready to comply with the order of the court as may be passed in the present matter. In short, Haryana Government has no objection to the licence being transferred/renewed in the name of the petitioner as per the declaration in the affidavit.

17. In the short reply filed on behalf of the State of Haryana by the District Magistrate, Karnal on behalf of respondents no.2 and 3, it is clarified that the Haryana Government has no jurisdiction to issue a licence in respect of .38 bore revolver and the competent authority is the first respondent dealing with licences for prohibited weapons. Haryana Government is clear in its stand. The case has to be considered from the point of view of respondent no.1-Union of India.

18. Schedule 1 (See Rule 3) of the Arms Rules, 2016 deals with prohibited and restricted arms and ammunition. Part A, Category (1) (2) (a) deals with prohibited arms and defines them as those which are:- (i) Prohibited arms as defined in Section 2 (1) (i) of the Act; (ii) items configured for military use; (iii) light weapons; (iv) Small arms including automatic and selective fire other than those defined in category I(b), I(c) and III. A .38 bore revolver falls under restricted arms under Category 1 (2) (c) (iii) and is accordingly not a “prohibited” arm anymore, but a “restricted” weapon. We need not elaborate on the permissible arms as those are not the subject matter of this petition.

19. Rule 12 deals with obligations of licensing authority in certain cases:- (1) Save as otherwise provided in the Act, every licensing authority granting a licence in Form III to an individual for the restricted or permissible arms or ammunition as specified in category I(b) and I(c) or category III respectively in Schedule I, shall have due regard to the application of norms specified in sub-rules (2) and (3). Sub Rule (2) of Rule 12 deals with grant of a licence for the restricted arms. In such cases, the licensing authority, may consider the application of persons falling in categories enumerated in sub rule provided that before grant of a licence under this sub-rule, the licensing authority, based on the recommendations of the district magistrate and of the State Government concerned and on examination of the police report and after conducting a separate verification from its own source, shall satisfy itself that the applicant requires such licence. Rule 12 (3) (c) provides that any person in service or having served in the Defence Forces, Central Armed Police Forces or the State Police Force and has genuine requirement to protect his life and/or property, may be granted licence, subject to verification. Rule 25 deals with grant of licences to certain persons which reads as under:-

“25. Grant of licences to legal heirs.— (1) The licensing authority may grant a licence —

(a) after the death of the licensee, to his legal heir;

or

(b) in any other case, on the licensee attaining the age of seventy years or on holding the firearm for

twenty-five years, whichever is earlier, to any legal heir nominated by him:

Provided that notwithstanding the provisions contained in rule 12 of these rules, the licensing authority may grant a licence to such legal heir if the eligibility conditions under the Act and these rules are fulfilled by the said legal heir and there are no adverse remarks in the police report.

(2) Where a licensee leaves behind more than one legal heir and the legal heirs decide amongst themselves to retain the arm or arms of the deceased, one of the legal heirs nominated by all other legal heirs may apply for a licence under sub-rule (1) along with the following documents, namely:-

- (i) a declaration of no-objection from the remaining legal heirs;
- (ii) an indemnity bond executed by the applicant giving full details of the licence and the arm or arms endorsed thereupon; and
- (iii) a copy of the death certificate of the deceased licensee.

(3) Where the legal heirs decide to dispose of the arm or arms endorsed on the licence of the deceased licensee, they may apply to the licensing authority for grant of a limited period permission to sell the arm or arms, within the time allowed by

such authority, to any licensed dealer or to any other person entitled to possess an arm under these rules.

Explanation:-

For the purposes of this rule, 'legal heir' includes husband, wife, son, daughter, son-in-law, daughter-in-law, brother, sister and grandchildren of the licensee or the deceased licensee."

"(d) any family member or kith and kin of a person who by the very nature of his duty or performance (past or present) or position occupied in the Government (past or present) or even otherwise for known or unknown reasons exposed himself to anticipated risk to his life; or

(e) any other person, for any legitimate and genuine reason, to the satisfaction of the licensing authority, by passing of a speaking order in this regard:"

20. Rule 47 (Chapter IV) deals with deposit of arms and ammunition under Section 21 of the Act. Rule 47 enjoins that refusal to renew must be in writing to the licensee. Proviso to Rule 47 (1) requires of fire arms to be deposited by the legal representative with the Officer-in-charge of the nearest police station or with the dealer holding licence in Form VIII within a period of three months of the death of the licensee.

21. There is no dispute in this case, that after the death of petitioner's father, the weapon was deposited in the manner

prescribed and is since lying in police custody. Rule 47 (2) lays down that subject to the proviso to sub-section (2) of section 21, the licensee or, in the case of his death, his legal representative shall be entitled to sell or otherwise dispose of the arms or ammunition to any person lawfully entitled to possess the same and to receive the sale-proceeds, if any, during the period specified in column (3) of the Table incorporated in the rule in case of deposit of arms and ammunition mentioned in column (2) of the said table in sub-rule (6). Sub Rule (6) of Rule 47 provides that the depositor or his legal representative may exercise his rights to receive back or dispose of any arms or ammunition under sub-section (2) of section 21, within the period specified in column (3), in case of deposit of the arms or ammunition specified in column (2) of the table incorporated therein. In Column 6 of the Table under Sub Rule 6 of Rule 47, the word “inherited” has been used i.e. by person who owned or is inherited by a person who has not completed the age of twenty-one years. Retrieval of the revolver in this case is not in the hands of the State Government. Although the State Government has custody of the weapon, but the competent authority is the Central Government for renewal/transfer of the weapon.

22. The Union of India has filed reply through the Under Secretary, Ministry of Home Affairs, New Delhi. The reply is short and not para-wise and runs into no more than 1 ½ pages and contains only one material paragraph 3 in which it is averred as follows:-

“3.That in reply to the averments made in paras no.10 to 18 by the petitioner in the instant writ petition, it is submitted that only procedure with

regard to the Arms Rules and some citations, though these all are a matter of record, but not applicable to the case of the petitioner.

Furthermore, it is submitted that the application of petitioner for grant of licence under Family Heirloom basis was rightly rejected on 30.3.2016.

The rejection of the application of the petitioner is as per the MHA guideline No.V.II016/16/2009-Arms.”

23. Neither the Union of India nor the State of Haryana has placed on record the guidelines of the Government of India, but the guidelines of the Government of India, a downloaded copy of the same referred to in the rejection order has been pointed out to the petitioner by the Government of India in its letter dated 4.8.2016 that these guidelines are available on website i.e. www.mha.nic.in (at page 25 of the paper-book). Therefore, this Court has accepted the downloaded copy from the official website to be authorised and reliable document. Paragraph 9 of the guidelines deals with the grant of Arms and Ammunition under family heirloom category which reads as under:

“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.”

24. In the opening paragraph of the aforesaid guidelines, the term “existing licensee” would not mean anything other than the existing licensee as person who owns the restricted/prohibited firearm and only after his death the weapon can be claimed as heirloom by the legal heirs. Legal heirs have been defined in Clause 9 and the petitioner eminently falls within the enumeration as a son of the last license holder. It cannot be said that the petitioner has no right at all for renewal or transfer of licence in his name. Revolver being inheritable property from father to son, then if the report of local police is in his favour and if the State of Haryana has no objection to transfer, I do not see any reason why the Government of India (Ministry of Home Affairs) has ruled otherwise and declined the prayer and that too by a non-speaking order, without elaborating on the very guidelines cited against the petitioner in declining his case.

25. I may add here that the petitioner’s reliance on the order placed as Annex. P-3 is not appropriate since that order has been issued by the Government of National Capital Territory of Delhi, Home (General) Department while the weapon is claimed in Haryana for transfer in the name of the petitioner. Therefore, I have not relied on Annex. P-3 as it has also not been referred to by the Union of India in its reply or in the impugned order. As a prohibited fire arm is involved in this case, with no objection from the local police, Haryana, the Central Government instead of citing the guidelines mentioned by them could have considered the case only within strict parameters of law defined by them and could have cross-checked the antecedents of the petitioner through its own sources to evaluate his

application, as to whether it was fit case for transfer of a prohibited .
38 bore handgun.

26. By the nature of the office held by the petitioner in the Indian Police Service serving in Haryana and armed with the positive report of the local police, this Court has hardly any doubt as to the capability of the petitioner in handling weapons as it is part of the nature of his duty and training.

27. The first respondent has obfuscated the entire issue and has declined the request of the petitioner on wholly untenable ground without even caring to read paragraph 9 of the guidelines relating to non-prohibited weapon. Arms Rules, 2016 superseded the Arms Rules, 1962. But there is nothing in the new rule which nullifies, withdraws, varies, cancels the guidelines or executive instructions dealing with grant of arms licence of a prohibited weapon coming down as family heirloom on the death of Shri Harnam Singh.

28. I had no doubt at the beginning of hearing that the impugned order has to be set aside on the short ground of being non-speaking, and therefore, in violation of the principles of natural justice inasmuch as passed without offering hearing or inviting objections from the petitioner. However, mere quashing of the order on this ground is not sufficient and relief has to be accompanied by directions to the first respondent immediately to re-consider the case of the petitioner for renewal and transfer of licence in his name in terms of the family heirloom policy, keeping in mind the reasoning in this order and the fact that the local police in Haryana where the petitioner resides permanently, has no objection to the transfer of non-prohibited bore weapon.

29. The Arms Act, 1959 classifies a .38 bore revolver as a prohibited weapon, but in the Arms Rules, 2016, nomenclature has been changed to “restricted weapon”. There is a striking difference between the words “restriction” and “prohibition”. “Prohibition” means to make something illegal or illicit and not grantable, while “restriction” means to restrain within bounds, to limit, to confine which means something still is left to be done by imposing certain conditions.

30. Consequently, the writ petition is allowed and the impugned order dated 31.3.2016 (Annex. P-5) is quashed as unfair, unreasonable and arbitrary. A writ of mandamus is issued to respondent no.1 to re-consider the case of the petitioner in the light of this order and to finalise the same by a speaking order within two months from the date of receipt of a certified copy of this order.

18.10.2019
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes/No