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

\+ **W.P.(C) 8506/2015**

VED SINGH ..... Petitioner

Through: Mr L. K. Parsi and Mr Ravi Kumar, Advocates.

versus

ADDL. COMMISSIONER OF POLICE LICENSING UNIT .....Respondent

Through: Mr Satyakam, Additional Standing Counsel, GNCTD.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 24.01.2019

VIBHU BAKHRU, J

1. The petitioner has filed the present petition impugning an order dated 12.08.2015 passed by the Appellate Authority (Lieutenant Governor, Delhi) whereby the petitioner's appeal under Section 18 of the Arms Act, 1959 (hereafter 'the Arms Act') preferred against an order dated 08.07.2014 passed by the Licensing Authority, was rejected.

2. The petitioner claims that he is an RTI Activist and also the President of Ganesh Nagar Resident Welfare Association. He further claims to be a property consultant. On 05.09.2013, the petitioner applied for an arms licence for personal protection.

3. On 14.11.2013, the petitioner was afforded a personal hearing. Reports were also sought from DCP (West) as well as the local police.

4. The Additional Commissioner of Police (West District) submitted a report indicating that the petitioner was involved in two cases: FIR No. 224/2009 under Section 509 IPC and FIR No. 917/1996 under Section 160/427/34 IPC. It was reported that the petitioner had been acquitted in the case relating to FIR No. 224/2009 but was admonished under Section 427 IPC in the case relating to FIR No. 917/1996. It was reported that the petitioner was residing in a densely populated area and the police assistance was available at a short distance. In view of the above, his case for grant of arms license was not recommended. The Deputy Commissioner of Police (West District) also did not recommend grant of arms license, as he found that there was no specific reason for obtaining such license.

5. In view of the aforesaid reports, the Licensing Authority rejected the petitioner's application for grant of a license by an order dated 08.07.2014. The reasons for rejection of the licenseas indicated in the said communication are set out below:-

> "After due application of mind and considering all the facts and circumstances of the case, it was found that:-
>
> 1. You do not have any good reason for grant of an arms license.
>
> 2. You do not have any specific threat.

3. In the report from local police, as required under section 13(2) of Arms Act, 1959 it has been stated that you do not have any requirement or need of weapon.

In view of above, your application for grant of an arms license has not been acceded to by the licensing authority and the matter is now closed at our end."

6. Aggrieved by the same, the petitioner filed a review petition for review of the said order, which was rejected.

7. Thereafter, the petitioner preferred an appeal dated 23.08.2014 under Section 18 of the Arms Act, which was also dismissed by the Appellate Authority (Lieutenant Governor, Delhi). The Appellate Authority concluded that there was no genuine need which justified grant of arms licence to the appellant.

8. The learned counsel appearing for the petitioner contends that the petitioner had not incurred any disqualification as envisaged under Section 14(1) of the Arms Act and, therefore, the petitioner's request for licence could not be denied. He referred to the decision of a Coordinate Bench of this Court in ***Vinod Kumar v. The State & Ors.*** :***W.P. (C) 1631/2012, decided on 09.09.2013*** and ***Sahil Kohli v. Additional Commissioner of Police*** : ***W.P. (C) 5959/2013, decided on 20.09.2013***. He submitted, on the strength of the said decisions, that the Licensing Authority had no discretion to reject the petitioner's application for an arms licence if the grounds under Section 14 (1) of the Arms Act were not established.

9. Mr Satyakam, the learned counsel appearing for the respondents countered the aforesaid submissions. He submitted that the petitioner had not made a full and true disclosure in his application inasmuch he had not disclosed that he was involved in two cases. Although, the petitioner had responded in the affirmative that he was involved in criminal case but he had only provided details of one of the cases that he was involved in. Mr Satyakam submitted that since the petitioner had not approached the Licensing Authority with clean hands, the decision to reject his application could not be faulted.

10. He referred to Section referred to Section 13 of the Arms Act and contended that in terms of Sub-Section (2A) of Section 13, the Licensing Authority was required to pass an order after such inquiry as it considered necessary. He submitted that this clearly indicated that the Licensing Authority had the discretion to refuse the grant of licence, if the same was not considered necessary.

11. He referred to the decision of the Division Bench of this Court in ***People for Animals v. UOI & Ors.: 180 (2011) DLT 460*** and contended that grant of licence for acquisition and possession of firearms was only statutory privilege and not a matter of fundamental right under Article 21 of the Constitution of India. He also referred to the decision of the Full Bench of the Allahabad High Court in ***Ran Pratap Singh v. State of UP: 1996 Cr.L.J 665*** in support of his contention.

12. He contended that the law laid down in ***Vinod Kumar v. The***

state &Ors.(*supra*) and ***Sahil Kohli v. Additional Commissioner of Police*** (*supra*) was not good law, as the Court had not noted earlier decisions. He further drew the attention of this Court to the decision of a Coordinate Bench of this Court in ***Ashish Talgotra v. Addl. Commissioner of Police Arms & Explosive Licensing Auhtority: W.P. (C) 6105/2014, decided on 23.11.2015***, wherein the Court after referring to earlier decisions held that the judgments in ***Vinod Kumar*** and ***Sahil Kohli*** (*supra*) were not good law.

13. Before proceeding further, it would be relevant to refer to provisions of 13 and 14 of the Arms Act, which are set out below:-

> "**13. Grant of licences**.—(1) An application for the grant of a licence under Chapter II shall be made to the licensing authority and shall be in such form, contain such particulars and be accompanied by such fee, if any, as may be prescribed.
>
> [(2) On receipt of an application, the licensing authority shall call for the report of the officer in charge of the nearest police station on that application, and such officer shall send his report within the prescribed time.
>
> (2A) The licensing authority, after such inquiry, if any, as it may consider necessary, and after considering the report received under sub-section (2), shall, subject to the other provisions of this Chapter, by order in writing either grant the licence or refuse to grant the same:
>
> Provided that where the officer in charge of the nearest police station does not send his report on the application within the prescribed time, the licensing authority may, if it deems fit, make such order, after

the expiry of the prescribed time, without further waiting for that report.]

(3) The licensing authority shall grant—

(a) a licence under section 3 where the licence is required—

(i) by a citizen of India in respect of a smooth bore gun having a barrel of not less than twenty inches in length to be used for protection or sport or in respect of a muzzle loading gun to be used for bona fide crop protection:

Provided that where having regard to the circumstances of any case, the licensing authority is satisfied that a muzzle loading gun will not be sufficient for crop protection, the licensing authority may grant a licence in respect of any other smooth bore gun as aforesaid for such protection; or

(ii) in respect of a point 22 bore rifle or an air rifle to be used for target practice by a member of a rifle club or rifle association licensed or recognised by the Central Government;

(b) a licence under section 3 in any other case or a licence under section 4, section 5, section 6, section 10 or section 12, if the licensing authority is satisfied that the person by whom the licence is required has a good reason for obtaining the same.

14. Refusal of licences.—(1) Notwithstanding anything in section 13, licensing authority shall refuse to grant—

(a) a licence under section 3, section 4 or section 5 where such licence is required in respect of any prohibited arms or prohibited ammunition;

(b) a licence in any other case under Chapter II,—

(i) where such licence is required by a person whom the licensing authority has reason to believe—

(1) to be prohibited by this Act or by any other law for the time being in force from acquiring, having in his possession or carrying any arms or ammunition, or

(2) to be of unsound mind, or

(3) to be for any reason unfit for a licence under this Act; or

(ii) where the licensing authority deems it necessary for the security of the public peace or for public safety to refuse to grant such licence.

(2) The licensing authority shall not refuse to grant any licence to any person merely on the ground that such person does not own or possess sufficient property.

(3) Where the licensing authority refuses to grant a licence to any person it shall record in writing the reasons for such refusal and furnish to that person on demand a brief statement of the same unless in any case the licensing authority is of the opinion that it will not be in the public interest to furnish such statement."

14. Sub-Section (2) of Section 13 of the Arms Act requires the authorized authority to call for a report of the officer in charge of the police station. Plainly, the purpose of calling for such report is to ascertain whether there is any requirement for grant of a firearm

licence. In terms of Sub-Section (2A) of Section 13 of the Arms Act, the Licensing Authority is required to pass an order in writing either granting the licence or refusing the same. This also clearly indicates that the Licensing Authority is required to take an informed decision where licence is required to be granted. Sub-Section (3) of Section 13 indicates the circumstances in which the licensing authority shall grant a licence.

15. Clause (a) of Sub-Section 3 of Section 13 provides that a licence can be granted for protection or sport to be used for bona fide crop protection. In terms of Clause (b) of Sub-Section (3) of Section 13 of the Arms Act, the Licensing Authority can also grant an arms licence under Section 13 in any other case provided that the Licensing Authority is satisfied that the person to whom such licence is granted has good reason for obtaining the same.

16. In the present case, the petitioner had sought a licence for a firearm for self-protection. It was, thus, necessary for the Licensing Authority to examine whether the said reason was justified. In the present case, the Licensing Authority had concluded on the basis of the inquiry conducted that there was no threat perception that required the petitioner to carry arm for self-protection. In this view, the condition as specified in Section 13 (3) (a) (i) of the Arms Act remained unsatisfied.

17. Merely, because an applicant states that he requires the arms licence for purposes of self protection, would not necessarily qualify

him for grant of a licence under Section 13 (3) (a) (i) of the Arms Act. The Licensing Authority must be duly satisfied that a firearm is required for such purpose.

18. Section 14 (1) of the Arms Act contains a *non obstante* provision; it requires the Licensing Authority to refuse a licence in certain cases notwithstanding anything stated in Section 13 of the Arms Act. The provision of Section 14 (1) of the Arms Act cannot be read to set out exhaustive grounds on which a licence can be refused. It, certainly, cannot be read to mean that even if the conditions in under Section 13(3) of the Arms Act are not satisfied, the Licensing Authority would be obliged to grant an arms licence.

19. Sub-section (2) of Section 14 of the Arms Act is couched in negative terms; it clarifies that a licence shall not be refused merely on the ground that the applicant does not possess sufficient property. Plainly, other grounds are not eliminated. Sub-section (3) of Section 14 of the Arms Act mandates that the licensing authority shall record the reasons for refusing a license.

20. The contention that a licence can be refused only on the grounds as set out in Section 14 of the Arms Act, is not persuasive. The legislative scheme of Section 13 of the Arms Act confers the function to make the decision, whether to grant or refuse a licence on the Licensing Authority. It also indicates the reasons for which it shall be granted. Thus, clearly, the discretion to determine whether the said reasons exist also vests with the Licensing Authority. This Court

concurs with the view as expressed in ***Ashish Talgotra v. Addl. Dy. Commissioner of Police Arms and Explosive Unit*** (*supra*) that the decisions rendered by the Court in ***Vinod Kumar v. The State & Ors.***(*supra*) and ***Sahil Kohli v. Additional Commissioner of Police*** (*supra*) are not good law.

21. This Court has rendered several decisions holding that the discretion of the Licensing Authority with regard to the threat perception to any individual cannot be interfered with. In ***Raj Kumar Pandey v. Additional Commissioner of Police & Anr***: ***LPA No. 44/2016***, the Division Bench of this Court had held that whether a threat perception exists has to be assessed by the investigating agency and it would not be apposite for this Court to foray into determining the said question.

22. In ***Praveen Kumar Beniwal v. Govt. of NCT of Delhi & Anr.*** : ***LPA 41/2015, decided on 29.04.2015***, the Division Bench of this Court had referred to a decision of the Allahabad High Court in ***State of U.P. v. Mahipat Singh****: 2014 (2) ALJ 443*, wherein it was held that the scheme of the Arms Act and the Rules made thereunder indicate that a wide discretion has been granted to the Licensing Authority and such discretion cannot be confined to the specified categories. The Court had also held that whether there is perception of threat to the security of a citizen has to be considered by the Licensing Authority and the Court would not substitute its opinion for that of the Licensing Authority. This is also the view as expression by this Court in ***Praveen Kumar Beniwal v. Govt. of NCT of Delhi****: W.P.(C) 8111/2014,*

decided on 22.12.2014. Similar views have also been expressed by a Coordinate Bench of this Court in ***Virendra Prasad v. The Additional Commissioner of Police & Anr.: W.P. (C) 11035/2016, decided on 03.07.2017***.

23. In view of the above, this Court finds no infirmity with the impugned order. The petition is unmerited and is, accordingly, dismissed.

VIBHU BAKHRU, J

JANUARY 24, 2019
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