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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision:-22nd May, 2023.

+ W.P.(C) 7034/2023 & CM APPL. 27372/2023

ADV. SHIV KUMAR

..... Petitioner

Through: Petitioner in person. (M: 9599911796).

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Vikrant N Goyal, Adv. for R-1.
Mr. Santosh Kr Tripathi, SC, Civil
GNCTD with Mr. Arun Panwar, Mr.
Pradyumn Rao & Ms. Mahak
Rankawat, Advs.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh J. (Oral)

1. This hearing has been done through hybrid mode.
2. By way of the present petition, the Petitioner challenges the order dated 30th November, 2022 passed by the Hon'ble Lieutenant Governor, Delhi in *Appeal No. 44/2020*. By way of the said order, the application of the Petitioner seeking arms license has been rejected.
3. The Petitioner is a practicing advocate seeking directions for issuance of arms license by the Joint Commissioner of Police (Licensing), which is the Licensing Authority under the Arms Act, 1959. The Petitioner had filed an application on 27th July, 2015 for issuance of an arms license. Since the same was not disposed of, the Petitioner filed a writ petition being *W.P.(C) 8808/2020* titled *Advocate Shiv Kumar v. Union of India & Ors.* seeking early decision on the same.

4. Vide order dated 9th November, 2020, a ld. Single Judge of this Court had directed that the decision in respect of the said licensing application be taken within a period of four weeks. Thereafter, the license application of the Petitioner was rejected by the Licensing Authority on 23rd November, 2020. An appeal against the said decision was filed by the Petitioner under section 18 of the Act, which was also rejected by the Appellate Authority i.e., the Hon'ble Lieutenant Governor (LG) on 30th November, 2022. The said orders are under challenge in this petition.

5. Ld. counsel for the Petitioner relies upon the judgment of this Court in *Vinod Kumar v. State* 2014 (1) LRC 375 (Del) as also the judgment of the Gujarat High Court in *Devshibhai Raydebhai Gadher v. State of Gujarat* [C/SCA/13499/2021, decision dated 13th June, 2022] to argue that if none of the grounds under Section 14 of the Act are made out, the arms license would have to be issued.

6. On the other hand, ld. Counsel for the Respondent relies upon the decision of the ld. Single Judge of this Court in *W.P.(C) 6520/2015* titled *Yashpal Singh v. Licensing Authority* wherein vide order dated 2nd November, 2015, the Court has held that there can be no right to have an arms license, which is in effect a privilege.

7. A perusal of the impugned orders passed by the Licensing Authority as also the Appellate Authority would show that proper and due consideration has been afforded to the various facts which have been placed by the Petitioner. The Licensing Authority has observed that the primary reason on which the Petitioner seeks an arms license is on the ground that he appears in various court proceedings on behalf of the accused persons or complainants. His apprehension is also of threats from accused persons,

when he appears for complainants. In respect of the said apprehension, the Licensing Authority has observed, in the impugned order, as under:

“ORDER

This is an application in form A-1, under Rule 11 of The Arms Rules-2016 from Shri Shiv Kumar S/o Late Shri Rajender Singh R/o 9526/1, Street No. 13, Multani Dharida, Pahar Ganj, Delhi, for the grant of an Arms License for possessing Non-Prohibited bore firearms. The ground cited for possessing an Arms License is "Self Protection". Local Police report U/s 13 (2) of The Arms Act has been received as "Not Recommended" from SHO/Nabi Karim through DCP/Central Distt.

The applicant was called for assessment and was heard on 18.11.2020. The applicant is a practicing Advocate in Delhi. The applicant enrolled with the Bar Council of Delhi In the year 2011. The applicant is seeking an arms license on account of self-defence purpose only. The applicant has never been a victim of a crime. The applicant did not disclose any Instance of threat to his life or property undergone by him. No personal enmity as well as dispute with anyone is disclosed. No specific threat to his life is disclosed. The applicant states that he appears in various court proceedings both on behalf of accused persons and complainants. The applicant apprehends threat from accused person in cases where he appears on behalf of the complainants. The grounds put forward by the applicant are part of a job and may be classified as professional hazard. The applicant did not disclose any specific threat instance wherein an accused threatened him with bodily harm. There are thousands of practicing advocates in the city. If the ground put forward by the applicant were to be made a criteria for the grant an arms license, the Licensing Authority would be constrained to issue arms license to

practicing advocates in thousands. It is noted that most of the times advocates are engaged in court proceedings and weapon is not allowed in the court. Further, the licensed weapon cannot be kept either in a chamber or in the personal vehicle and therefore the very purpose of self- protection is defeated. There is no justifiable reason to grant an arms license to the applicant.

In several judgments, Hon'ble Delhi High Court held that "threat perceptions can only be assessed by the investigating agency and that no one can claim an Arms License as a matter of legal right" (WP (C) 8893/2015, Nirankar Rastogi, V/s 3t. CP and Ors, Delhi High Court and WP(C)6520/15 Yashpal Singh V/s Jt. CP/Licensing, Delhi High Court and HC Bijay Prakash V/s Hon'ble LG, Delhi & Ors. LPA 295/16 DB Delhi High Court and LPA 44/16 Raj Kumar Pandey V/s Addl. CP & Ors DB Delhi High Court, WP(C) 937/2015, Nasim Beg Vs Govt. of NCT of Delhi & Anr). Therefore, the request of Shri Shiv Kumar S/o Late Shri Rajender Singh is declined.

The applicant can prefer an appeal against this order under section 18 of Arms Act, 1959, to the Hon'ble Lt. Governor, Delhi within 30 days from the date of receipt of this letter."

Copy page 26 whole order

8. In the appeal preferred against the above order, the Appellate Authority i.e., the Hon'ble Lieutenant Governor has observed as under:

*"I have considered the submissions made by both the sides and gone through the case file. **I observe that as per record there seems to be no specific threat to the appellant or his family.** Therefore, I am of the opinion that merely being apprehensive of his safety while practicing as an advocate is not a good enough reason for grant of an arms licence. The Licensing Authority, after considering all aspects of the matter, has passed*

a reasoned order keeping in view the facts and circumstances of the case. I, therefore, find no ground to interfere with it. The appeal is accordingly dismissed.”

9. This Court has considered the provisions of the Arms Acts, 1959 as also the decisions cited by the Id. Counsels for the parties. Section 13 of the Act provides that an application for grant of a licensing has to be made to the Licensing Authority as also the conditions under which the same would be issued. Section 14 specifies the situations wherein a Licensing Authority shall refuse to grant a license. In the opinion of this Court, Section 14 while setting out some of the situations in which the license shall not be granted, does not make the same exhaustive. As held in *Yashpal Singh (supra)*, no one can claim a right to own an arms license. The relevant portion of the said order reads as under:

*“8. Reference, may be made to the recent judgment dated 29th September, 2015 in W.P.(C) No.8000/2015 titled **Rajkumar Pandey Vs. Additional Commissioner of Police**, order dated 18th September, 2015 in W.P.(C) No.8893/2015 titled **Nirankar Rastogi Vs. Joint Commissioner of Police** and order dated 23rd September, 2015 in W.P.(C) No.8928/2014 titled **Arvind Kumar Chauhan Vs. Lt. Governor**, where on a conspectus of the case law on the subject, it has been held that there is no right to have an arms licence which is a privilege and it is a question of fact which is to be ascertained by the authorities concerned whether a person is entitled to the said privilege or not and no interference with such factual findings is possible in writ jurisdiction.*

9. The counsel for the petitioner at this stage states that the petitioner resides in New Usmanpur area of Delhi which is also crime infested and reaches his home late at night after holding conferences and has to park his

car at the distance from his house. It is further stated that the petitioner as an Advocate is representing JVG group of companies, a large number of whose investors threaten the petitioner. It is further stated that the petitioner has a right to his life and has right to protect his life.

10. None of the aforesaid contentions would make any difference. It is the duty of the State to protect life and property of the citizens. There is nothing to suggest that the said factual finding is incorrect in any way. Similarly, the fact that the petitioner is living in a crime infested locality or is unable to drive till inside his house would not entitle the petitioner to an arms licence. It has been held in judgments aforesaid that threat perception also is a question of fact, finding whereon by the authorities concerned is non-interferable in writ jurisdiction.

11. There is thus no merit in the petition.

Dismissed.

No costs”

10. A Division Bench of this Court in *People for Animals v. Union of India* [CM No. 11288/2002, date of decision 20th May, 2011] has held that carrying and possessing firearms is only a matter of statutory privilege and no citizen has a blanket right to carry firearms. The relevant portion of the said order reads as under:

“20. It is well established that the matter of grant of licence for acquisition and possession of firearms is only a statutory privilege and not a matter of fundamental right under Article 21 of the Constitution of India. A Full Bench of the Allahabad High Court in *Kailash Nath and Ors. v. State of U.P. and Anr.*, AIR 1985 All 291 observed as under:

A right is distinct from a mere privilege. The case of a licensee to possess or use firearm is materially different from a case of licence to deal in or sell firearms. Section 3 of the Arms Act, 1959 deals with

acquisition and possession of firearms or ammunition on the strength of a licence whereas Section 5 provides for a licence for manufacture, sale etc. of arms and ammunition. The licence for acquisition and possession of firearms is materially different from a licence for manufacture, sale etc. While the latter confers a right to carry on a trade or business and is a source of earning livelihood, the former is merely a personal privilege for doing something which without such privilege would be unlawful. **In my opinion the obtaining of a licence for acquisition and possession of firearms and ammunition under the Arms Act is nothing more than a privilege and the grant of such privilege does not involve the adjudication of the right of an individual nor does it entail civil consequences.** I may, however, hasten to add that even an order rejecting the application for grant of licence may become legally vulnerable if it is passed arbitrarily or capriciously or without application of mind. **No doubt, a citizen, may apply for grant of a licence of firearms mostly with the object of protecting his person or property but that is mainly the function of the State.** Even remotely this cannot be comprehended within the ambit of Article 21 of the Constitution which postulates the fundamental right of protection of life and personal liberty.”

In the same judgment it was also observed that:

The consistent trend of judicial decisions has been that the official granting of the licence involves the exercise of discretionary licensing powers which are concerned with privileges and not rights. See *Randall v. Northcote Council* (1910) 11 CLR 100, 117-119, *Metropolitan Meat Industry Board v. Finlayson* (1916) 22 CLR 340; *Ex. P. Macarthy, re The Milk Board* (1935) SR (NSW) 47; *Nakkuda Ali v. Jayaratne* 1951 AC 66; *R. v. Metropolitan Police Commr., ex p. Parker* (1953) 1 WLR 1150; *Modern Theatres (Provincial) Ltd. v. Peryman* (1960) NZLR 191 See also *Merchants*

Bank Ltd. v. Federal Minister of Finance (1961) 1 All NLR 598 (Nigeria) (revocation of licence). The decision in Nakkuda Ali v. Jayaratne 1951 AC 66 was to the effect that the Controller of Textiles in Ceylon had cancelled a textile dealer's licence in pursuance of a power to revoke a licence when he had 'reasonable grounds' for believing its holder to be unfit to continue as a dealer. It was held that the Controller was not determining a question affecting the rights of subjects but was merely taking executive action to withdraw a privilege."

It is therefore, apparent that no citizen has a blanket right to carry firearms. *Its grant is subject to his applying for a license, and fulfilling the qualifications and criteria, spelt out in the Act and Rules. The National Rifle Association's position, therefore, that its members have a right to secure a license, is untenable. They have, at best a right to apply for, and be considered for the grant of a license, subject to fulfillment of the prescribed qualifications."*

11. During the course of submissions, the Court has asked the Petitioner appearing in person as to the reasons for which he has applied for an arms license. The only reason that is forthcoming is that the Petitioner wishes to own an arms licence for the purpose of his self-defence/protection.

12. Right to own a fire arm is not a Fundamental Right in India. This legal position is settled in several decisions including the recent decision of the Supreme Court in ***Rajendra Singh v. The State of Uttar Pradesh [SLP(Crl.) No. 12831/2022, decision dated 13th February, 2023]*** where it has been observed as under:

"It is again one of those cases where we find that according to the prosecution case, an unlicensed fire arm was used in commission of the offence involving Section 302 IPC also. We have come across cases where there is this phenomenon of use of unlicensed

fire arms in the commission of serious offences and this is very disturbing.

Unlike the Constitution of the United States where the right to bear fire arms is a fundamental freedom, in the wisdom of our founding fathers, no such right has been conferred on anyone under the Constitution of India. The matter relating to regulation of fire arms is governed by Statute, viz., Arms Act, 1959, inter alia.

It is of the greatest significance to preserve the life of all, that resort must not be made to unlicensed fire arms. In particular, if unlicensed fire arms are freely used, this will sound the death knell of rule of law.

13. Arms licence is a creation of the statute and the Licensing Authority is vested with the discretion whether to grant or not grant such a licence, depending upon the fact situation in each case. All lawyers/advocates who are appearing on the criminal side for the accused or the prosecution cannot claim a right to own an arms license, inasmuch as this could result in issuance of arms licenses indiscriminately. The perceived weakness of the State, which is one of the grounds, which the Petitioner has urged for seeking the arms license, if accepted, would result in recognition of a right to own a fire arm. This recognition leading to issuance of a licence and unbridled owning of fire arms, could also pose a threat to the safety and security of the other citizens, which the Licensing Authority would have to keep in mind while allowing or rejecting the arms license. The Licensing Authority has to assess the threat perception and the reasons for the request for a license which has been given by the applicant concerned. It is only after assessing the same that such a license can be issued. An application by an advocate merely based on the ground of appearance on behalf of the

accused persons, in the opinion of this Court, would not be sufficient to grant an arms license.

14. In the facts of this case, after having perused the impugned order, this Court is of the opinion that no interference is called for in writ jurisdiction as the refusal of grant of arms license is well reasoned.

15. The petition, along with all pending applications, is disposed of.

**PRATHIBA M. SINGH
JUDGE**

MAY 22, 2023/dk/sk

