
(2015) 08 AHC CK 0173

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 54917 of 2013

Ajad Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 24-08-2015

Acts Referred:

Arms Act, 1959 — Section 14, 25, 3, 4, 5
Constitution of India, 1950 — Article 21

Citation : (2015) 10 ADJ 259 : (2015) 91 ALLCC 758

Hon'ble Judges : Pankaj Mithal, J.

Bench : Single Bench

Advocate : R.C. Pal and P.C. Chaudhary (Suraj), for the Appellant

Final Decision : Allowed

Judgement

Pankaj Mithal, J.—Heard Sri R.C. Pal, learned counsel for the petitioner and learned Standing Counsel for the respondents. The petitioner has challenged the order dated 19.6.2009 passed by the District Magistrate refusing to grant fire-arm licence to him under Section 14 of the Arms Act, 1959 (hereinafter referred to as the Act) and the appellate order dated 5.7.2013 passed by the Commissioner of the Division affirming the same.

2. The father of the petitioner was having S.B.B.L. gun and a licence to hold the same. He died on 3.2.2005. On his death the fire-arm was surrendered on 27.8.2008 and thereafter petitioner applied for a licence to possess the same. The application has been rejected on the ground that as the petitioner has allegedly kept the firm arm for more than three years with him after the death of his father he has committed an offence under Section 25 of the Act and as such is not entitle to the licence.

3. The order has been affirmed by the appellate Court holding that the petitioner has no fundamental right to possess a firm arm licence.

4. In other words, the licence has been refused to the petitioner for two reasons

namely (i) he has committed an offence under Section 25 of the Act by not depositing the fire-arm immediately on the death of his father; and (ii) that he has no fundamental right to carry a fire-arm.

5. Section 14 of the Act provides for the grounds on which the licencing authority can refuse to grant a licence to possess a fire-arm.

6. It provides that the licencing authority shall refuse to grant licence as completed under Sections 3, 4 and 5 if it is required in respect of any prohibited arms or ammunition.

7. In respect of other arms and ammunition which are not prohibited the licence can be refused on the following grounds:

(i) where the licencing authority has reason to believe that the person applying is prohibited under the Act or any other law from possessing or carrying any arms or ammunition;

(ii) where the person applying is of unsound mind; or

(iii) where the person for any reason is unfit for a licence under the Act; and

(iv) where the licencing authority deems it necessary that for the security of the public peace or for public safety that the licence should not be granted to the person concerned.

8. The commission of an offence under Section 25 of the Act is not specifically provided under Section 14 of the Act as a ground for refusal to grant licence. It is not the case of the respondents that petitioner was prohibited under the Act or any law from possessing or carrying any fire-arm or that it was deemed necessary for the security of public peace or public safety to refuse him licence.

9. The only possible ground under which the petitioner can be refused licence is that he is unfit for holding a licence as he has committed an offence under Section 25 of the Act by retaining the fire-arm of his father for a long time despite his death.

10. Section 25 of the Act provides for the punishment of certain offences under the Act. It inter alia provides for the punishment for acquiring or possessing fire arm or in contravention of Sections 3 of the Act.

11. Section 3 of the Act provides that no person shall acquire, have in his possession or carry any fire arm ammunition without a licence.

12. It is in view of the above provision that it is said that the petitioner has held the fire-arm for a period of three years six months after the death of his father without a valid licence which is an offence punishable under Section 25 of the Act.

13. The petitioner on the death of his father had not ipso facto acquired the firearm held by him. It is on record that there was a serious dispute regarding the properties of his late father including the firearm possessed by him. It is only

on the settlement of the property disputes amongst the family members when it was decided that the fire-arm possessed by the father of the petitioner will go to his share that the petitioner applied for the licence. It is not on record that it was in his possession.

14. In this view of the matter it cannot be said that the petitioner on the death of his father had acquired the fire-arm or was in possession of it. There is no finding that he was ever in possession of the same or had carried it before depositing the same with the fire-arm dealer. In the absence of such findings, it cannot be said that the petitioner had acquired any firearm or was in possession of it or has carried the same without a licence.

15. The fire-arm possessed by his father was under a valid licence and it remain in custody of the family members not necessarily the petitioner with no finding about its possession with any particular person much less the petitioner.

16. In addition to the above, the petitioner has not been held guilty of any offence under Section 25 of the Act by any Court of law. Therefore, refusal of licence to him on the ground that he has committed an offence under Section 25 of the Act is wholly without jurisdiction.

17. That other aspect that the petitioner has no fundamental right to carry a fire-arm as has been observed by the appellate authority does not require any elaborate consideration in view of the settled legal position that right to carry arms for self-defence is a part of Article 21 of the Constitution of India and that no one can be deprived of this fundamental right though may be subjected to reasonable restrictions. 12

18. In view of the aforesaid facts and circumstances, the impugned orders dated 19.9.2009 and 5.7.2013 are quashed and the District Magistrate is directed to reconsider the application of the petitioner for grant of licence on its own merit in accordance with law expeditiously. The writ petition is allowed as above.