
(2018) 03 DEL CK 0199

In the Delhi High Court

Case No : Civil Writ Petition No. 5775 Of 2015

Ravinder Hooda

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 01-03-2018

Acts Referred:

Citation : (2018) 03 DEL CK 0199

Hon'ble Judges : Rajiv Shakdher, J

Bench : Single Bench

Advocate : Swastik Singh, Himanshu Dagar, Anurag Ahluwalia, Tejaswita, Abhigyan Siddhant, Arun Kumar

Final Decision : Disposed Off

Judgement

Rajiv Shakdher, J

1. This is a writ petition which is directed against the communication bearing No.V-11019/71/2013-ARMS, dated April 2015 addressed by respondent no.1 to the petitioner. Relevant portion of this communication is extracted hereunder:

"I am directed to refer to the Govt. of Haryana's letter No.3/605/ 2013-4H.G-III dated 29.10.2013 on the subject mentioned above.

2. The request of Shri Ravinder Hooda, S/o (L) Ramprakash for grant of PB arms licence for possession of .38 bore revolver on transfer under family heirloom basis has been considered carefully in this Ministry. However, it is regretted that the request has not been agreed to by the Competent Authority, as it has been observed that there is no sufficient grounds for grant of PB arms licence for possession of .38 bore revolver on transfer under family heirloom basis.

3. The original licence No.776/III/R is enclosed."

4. As would be apparent upon a bare perusal of the impugned communication, the petitioner has applied for grant of prohibited arms licence qua .38 bore revolver, which he possesses, under Transfer/ Family Heirloom Policy. The

impugned letter does not provide any reasons whatsoever as to why the petitioner's request for grant of licence under the Transfer/ Family Heirloom Policy has been declined.

5. The contention of the petitioner is that he fulfils the criteria stipulated in the policy letter dated 06.04.2010. In particular, the petitioner relies upon Clause (iii) of the said letter which reads as follows:

"iii) Grant of Licences under family heirloom Attention is invited to the instructions contained in MHA's letter No.V-11019/23/95-Arms dated 28-02-1995 regarding grant of licences 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 heir ship 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." (emphasis is mine)

6. A perusal of the aforesaid extract would show that what is stated therein is tied-in with another set of instructions contained in the Ministry of Home Affairs' letter bearing No.V-11019/23/95-Arms, dated 28-02-1995.

7. On the previous date, this Court had directed the learned counsel for the respondents to produce the letter dated 28.2.1995. A copy of the said letter has been produced by Mr. Anurag Ahluwalia, learned counsel for the respondent no.1, today.

7.1 A bare perusal of the said letter would show that there are two categories under which an applicant's request for issuance of a fresh license could be considered. The first category comprises those applicants who are legal heirs of deceased license holders, and the second category comprises of applicants who are legal heirs of license holders who are alive.

8. Insofar as the first category is concerned, fresh license for prohibited bore weapon could be granted to a defence personnel, who was allocated such weapon prior to June 1982, and to legal heirs of the deceased license holders, who would like to keep such weapon as a family heirloom, albeit, on sentimental grounds. The second category, though, not relevant for this case, to be noted, stipulates that in order to obtain a licence, the license holder should have held the weapon for a long period of time, say 25 years or more or the licensee should have attained the age of 70 years.

8.1 Besides providing for categories, letter dated 28.2.1995 also provides for conditions under which fresh license can be granted. Out of the three conditions stipulated, two conditions substantially apply to both categories. These being:

"1. Weapon should be transferable to legal heirs only; and

2. The person should be eligible to get a licence and should be capable of handling the firearm which is intended to be transferred to him....."

9. Clearly, nothing has been said in the impugned letter which would have one come to the conclusion that the petitioner is not entitled to be considered for grant of fresh licence under the Family Heirloom Policy. There is no suggestion whatsoever in the impugned letter that the petitioner is not eligible to get a licence or capable of handling the firearm which is intended to be transferred to him.

10. I may indicate that the petitioner has also set up a case of discrimination inasmuch as he has referred to two cases in which licences have been granted in the past for prohibited bore in respect of a similar weapon, that is, .38 revolver. First case cited is that of one, Sh. Satender Budhawar; while the second instance referred to is of, one, Sh. Vijender Jindal.

11. Reference with regard to Sh. Satender Budhawar is made in paragraph 9 of the petition whereas reference with regard to Sh. Vijender Jindal is made in the rejoinder. Photocopies of the licences issued to these two persons have been filed by the petitioner.

12. Reliance has also been placed by the petitioner on a judgment dated 26.9.2013, rendered in CWP No.8464/2011, titled Darshan Singh vs. State of Haryana and Ors by the Punjab and Haryana High Court.

13. Having regard to the totality of circumstances, I am inclined to set aside the impugned communication bearing No.V-11019/71/2013-ARMS, dated April 2015, addressed by the respondent no.1 to the petitioner, with a direction to the respondents to reconsider the case of the petitioner for grant of the prohibited bore licence under the Family Heirloom Policy.

14. The respondents will hear the petitioner before coming to a conclusion either way. Respondents will also pass a speaking order; a copy of which will be served on the petitioner.

15. Needless to say, this exercise will be carried out as expeditiously as possible, though not later than 10 weeks of the receipt of a copy of the order, given the fact that an application for grant of fresh licence was made by the petitioner as far back as on 28.2.2013.

16. I may also indicate that Mr. Anurag Ahluwalia, learned standing counsel for the respondent no.1, has raised an objection as to the maintainability of the writ petition on the ground that the petitioner could have taken recourse to an alternative remedy. According to me, the availability of an alternative remedy does not prevent this Court from exercising jurisdiction if it is otherwise vested in it. Since the objection on this ground was not raised in the first instance and the matter has been pending before this Court for the past two years, I do not deem it fit to dispose of the writ petition based on the plea raised by Mr. Anurag Ahluwalia.

17. For the foregoing reasons, the writ petition is disposed in the aforesaid terms.