

NATIONAL CAPITAL TERRITORY OF DELHI & ANR.

v.

UMESH KUMAR

(Criminal Appeal No. 699 of 2003)

June 19, 2008

[Dr. Arijit Pasayat and G.S. Singhvi, JJ.]

The Order of the Court was delivered by

Dr.ARIJIT PASAYAT. Heard learned counsel for the parties.

The challenge in this Appeal is to the order passed by the Division Bench of the Delhi High Court allowing the Criminal Writ Petition No. 207/2001 by Order dated 7.12.2001.

The background facts in nutshell are as under:-

The respondent had been granted license for a .315 Bore Rifle. The Lt. Governor, Delhi upheld the order passed by the Deputy Commissioner of Police (Licensing) Delhi, in Appeal in terms of Section 18 of the Arms Act, 1959 (In short the Act). The Deputy Commissioner had directed cancellation of license on the ground that the respondent who was working as a Constable was involved in criminal offence and therefore, it was not in the interest of justice to continue currency of the license granted to him. Therefore, it was cancelled. The appeal before the Lt. Governor, as noted above, did not bring any relief to the appellant. The High Court was moved thereafter.

The High Court noted factual background as follows:

The respondent's license was cancelled on the ground that that he was found involved in case FIR No. 254/1991 for offences punishable under Sections 302, 307 read with Section 34 of the Indian Penal Code, 1860 (in short IPC) and Sections 25, 27 and 54 of the Arms Act. On the recommendation of the Crime Branch, notice was issued by the Dy. Commissioner of Police (Licensing) to show cause as to why the arms license should not be cancelled in the interest of public safety and peace as he has rendered himself to be unsuitable to hold license. The license was cancelled in exercise of power conferred under Section 17(3) of the Act. The Lt. Governor of Delhi as noted above dismissed the appeal. The High Court noted that the respondent was deployed in Delhi Police and during his involvement in the aforesaid crime was suspended and remained suspended till he was acquitted by the learned Additional Sessions Judge, Delhi. After the acquittal, suspension was revoked and he was reinstated in service on 19.1.2000. Before the High Court the stand of the present respondent was that the grounds on which the licence was cancelled did not exist any further and there was no reason as to why the appeal should have been dismissed.

It was pointed out by the High Court that on acquittal the respondent was found to be fit enough to continue in his post. When he was found to be so fit, there was no

reason as to why he should not have a license for a gun. A reference was also made to Clause 7 of Section 17 of the Act which provides that if the conviction is set aside on appeal or otherwise, the suspension or revocation of the license by the court convicting the holder of the license shall become void. According to the High Court, on the same analogy, when the respondent's involvement was not found acceptable the licence which was cancelled, ought to have been restored. Learned counsel for the State submitted before the High Court that the State had already filed an appeal questioning the acquittal of the respondent. The High Court was of the view that filing of an appeal cannot have any effect on the judgment of the acquittal. In case acquittal is set aside it was open to the authorities to take necessary action.

Learned counsel for the appellant submitted that the fact that appeal was pending consideration, should have been given due weightage. Even otherwise, a person serving in the Police Force and charged with serious offences should not be allowed to have a license. According to him grant of license is discretionary and there is no right in that sense to have a license. Learned counsel for the respondent, on the other hand, supported the judgment of the High Court.

We find that while issuing notice this Court had directed stay of the impugned order by Order 2.12.2002. Subsequently, leave was granted by Order dated 2.5.2003 and the interim order was made absolute. In other words, the High Court's Order is not operative as of now.

We are of the considered view that interest of justice would be best served if the orders passed by this Court staying operation of the High Court's order are continued till the disposal of the Appeal by the High Court. We make it clear by giving this direction, we have not expressed any opinion on the merits of the case. However, we request the High Court to dispose of the Appeal, if pending, as early as practicable preferably by the end of year 2008. The Appeal is accordingly disposed of.