

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of judgment: 08.04.2009

+ W.P.(C) 8044/2009, C.M. No. 4599/2009 (Stay Application)

A.C.DHAWAN GUN HOUSE Petitioner
 Through : Ms. Sumita Kapil, Advocate.
 versus

THE GOVT. OF N.C.T. OF DELHI & ORS. Respondents
 Through : Ms. Jyoti Singh, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

1. Whether the Reporters of local papers
may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be
reported in the Digest?

S.RAVINDRA BHAT, J. (OPEN COURT)

1. Issue notice. Ms. Jyoti Singh, Advocate accepts notice and states that the matter may be heard finally.
2. The writ petitioner is aggrieved by an order dated 26.02.2009 whereby the gun license issued to it was cancelled under Section 17(3) of the Arms Act, 1959. The facts briefly are that the petitioner was granted license to repair, test, transfer or offer for sale various categories of fire arms, in 1989. It is claimed that the petitioner's brother was the proprietor of the concern which was initially granted license. By virtue of family settlement, the same was taken-over by the present petitioner. The petitioner contends that in 1996, one Mr. Gobind Saran Singh, claiming to be in need of an arms license came into contact with one Ms. Uma Gandhi who had

allegedly claimed being capable of procuring genuine arms license from Delhi, through the petitioner; the said license was issued from Jammu and not from Delhi. The license was thereafter transferred to Gurgaon. It is claimed that no case was registered against the alleged offence till 2001 and the petitioner was never implicated. The petitioner submits that in 2005, a case was registered by the CBI which implicated him.

3. In the meanwhile, the petitioner applied for renewal of his license; the Dy. Commissioner of Police, on 29.04.2005 certified that renewal of his license was pending and that he was authorized to keep for sale, repair or test or transfer the items mentioned in the said letter. The petitioner also adverts to *inter se* correspondence between various authorities. Apparently, a chargesheet was filed on 30.05.2005 which names the petitioner as an accused in respect of offences under the Prevention of Corruption Act, 1988. Citing this as a ground, the respondents issued a Show Cause Notice to it on 05.07.2007.

4. The Show Cause Notice *inter alia* mentioned various circumstances by which the said Mr. Gobind Saran Singh secured his license and transfer of such license etc. It also recited the facts mentioned in the charge sheet filed in Court and inferred the petitioner's role. In the circumstance, it was called upon to show cause why the arms license issued to it should not be suspended. The notice *inter alia* is in the following terms:

"That the facts mentioned in the charge sheet clearly reveal that Shri Devender Dhawan got an illegal arms license issued in the name of Shri Gobind Saran Singh by falsely showing him as a resident of Jammu. Thereafter got the License registered from Sub Divisional Magistrate Office Gurgaon in conspiracy with Shri R.C. Powaria, erstwhile Sub Divisional Magistrate, Gurgaon Shri Ved Prakash Gupta, erstwhile arms licensing clerk Sub Divisional Magistrate office, Gurgaon.

AND WHEREAS Shri Devender Dhawan, Proprietor of M/s A.C. Dhawan Gun House, Arms & Ammunition Dealer during the period, the said offences were committed.

AND WHEREAS the said act of Shri Devender Dhawan was pre-judicial to security, public safety and public peace and that the reported act of Shri Devender Dhawan, Proprietor of M/s A.C. Dhawan Gun House, Arms & Ammunition Dealer was also found to be in contravention of the conditions of grant of license.

AND WHEREAS the police report was called under Sub-Clause 3 of Rule 15 read with Sub-Clause 2 of Rule 13 of Arms Act, and the Deputy Commissioner of Police (Lic) did not recommend the name of M/s A.C. Dhawan Gun House, Arms & Ammunition Dealer for renewal of license owing to the above offences committed by him.

NOW THEREFORE, in exercise of powers conferred upon the Licensing Authority under the provision of Sub-Section 3 of Section 17 of Arms Act, 1959, you are hereby called upon to show cause as to why the Arms and Ammunition dealership license No.77/XI/89 and 77/XIV/89 granted to you should not be suspended. Your reply to the notice should reach this Government within 10 days from the date of receipt of this notice, failing which it will be presumed that you have nothing to say in the matter and the decision will be taken on merits without further reference to you.

*By order in the name of
Lt. Governor of Govt. of NCT of Delhi*

*Sd/-
(VIJAY KHANNA)
DY. SECRETARY : HOME (G)”*

5. The petitioner submits to having resisted the Show Cause Notice and given explanation stating why the suspension of license should not be resorted to. Copies of letters dated 16.08.2007 and 31.12.2008 have been placed on record.

6. On 26.02.2009, the respondents issued the impugned order canceling the license itself.

The impugned order *inter alia* is in the following terms:

“WHEREAS after receipt of the said show cause notice, M/S. A.C. Dhawan filed a reply to the said show cause notice vide his letter dated 16.08.2007 and M/S. A.C. Dhawan denied all the allegations made against him stating that the allegations against him in the alleged criminal case are based on the statements recorded U/s 161 Cr.P.C. by the prosecution agency and that the witness cannot be deemed as evidence against him until or unless alleged witnesses depose the same before the court. It is further submitted that alleged criminal case is pending before the court and he cannot be restrained from his fundamental rights, until & unless the final verdict of the court held him guilty. It has specifically been denied by M/S. A.C.

Dhawan that the alleged act of proprietor was allegedly pre-judicial to alleged security and public safety or that to the public peace. It has further been denied that alleged act of proprietor was in contravention of the conditions of grant of license. Further, it has been submitted that merely having his name in the police charge-sheet, doesn't prove the involvement of proprietor in the alleged offence.

WHEREAS the reply filed by the licensee was duly considered and it was found that he same does not have any force. The comments of Deputy Commissioner of Police (Licensing) were sought in the matter which were also duly considered. After perusing the case file and considering the representation of M/S. A.C. Dhawan and comments of Deputy Commissioner of Police (Licensing), it is established beyond doubt that Sh. Davinder Kumar Dhawan was the proprietor of the said firm at the time of said offence.

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WHEREAS as per the report submitted by Sub-Divisional Magistrate vide his letter No.SDM(KB)/2008/5332 dated 12.09.2008, the firm is still continuing its business and without getting the licence renewed and obtaining necessary TL/NOC from the police authorities it proves mala fide intension of the firm.

WHEREAS keeping in view of the gravity of charges in the charge sheet filed by the CBI and considering all the facts and circumstances of the case, the licensing authority is of the considered opinion that end of justice would be met if the said Arms & Ammunition dealership licence of M/s. A.C.Dhawan is revoked with immediate effect.

NOW THEREFORE, the licensing authority in exercise of powers conferred upon him under sub-section (3) of section 17 of the Arms Act, 1959 hereby order to revoke the Arms & Ammunition Dealership licence in form XI bearing no. 77/XI/89 for safe custody in form XIV bearing no. 77/XIV/889 of M/s. A.C. Dhawan Gun House with immediate effect. The firm is further directed under provisions of section 21 of the Arms Act, 1959 to deposit the Arms & Ammunition in his possession to the officer-in-charge of the nearest police station."

7. It is submitted on the petitioner's behalf that the impugned order is a nullity because the petitioner was never given opportunity to show cause to the proposed cancellation. Learned counsel submitted that although the power to cancel arms license exists in Section 17(3) along with the power to suspend, nevertheless, the authority concerned has to put the licensee to notice about the action it proposes. Learned counsel contended that in the absence of the indication of

intended consequence, the notice would be defective and only course proposed can lead to that consequence alone. Thus, for instance, the authorities intended to suspend the license and issue a show cause notice for the purpose, they cannot enlarge the scope of the notice and cancel the license itself. The petitioner, therefore, submitted that the procedure adopted was unfair and violated all principles of natural justice.

8. Learned counsel for the respondents submitted that there is no infirmity in the order of the Govt. of National Capital Territory of Delhi and that the substratum which formed the basis of the show cause notice and which ultimately resulted in the findings that pursued the authorities to cancel the license itself were the same. The petitioner's explanation or reply to the show cause notice, therefore, could not have been radically different. The mere fact that one consequence was proposed but another eventually adopted by itself did not lead to infirmity since the source of power for both is the same, i.e. Section 17(3).

9. From the above discussion, it is evident that there is no dispute about the facts. The respondents had issued a Show Cause Notice dated 05.07.2007, proposing suspension of the petitioner's arms license on a given set of facts which pertained to his being implicated in a criminal case and charged with having committed offences under the Prevention of Corruption Act, 1988. The respondents did not deem it appropriate to take any action and suspend the license for about two years. This itself, in the opinion of the Court, shows that there was no urgency or imminent threat to public order as was thought of by the respondents. In any event, the charge sheet itself appears to have been lodged in 2005 in relation to a case made out in 2001. In this background, the respondents were under obligation, if they considered it appropriate to put the petitioner on notice of their intention to cancel the license and not fall back upon a notice dated 05.07.2007 which had merely proposed a suspension.

10. The Govt. of NCT of Delhi may be right in contending that the nature of allegations, which persuaded it to take the course it has finally taken, may be the same. Yet, there is no gain saying that natural disputes requirements have to be fully complied with – unless the concerned authority is able to point out to grave or imminent situation which compels it to dispense with the requirement. Plainly that is not the situation in this case; the authorities waited for more than two years after the filing of charge sheet and proposed suspension and not cancellation of the license. Now, almost two years later, the scope of that notice has been virtually enlarged and the petitioner is confronted with cancellation of the license itself – a consequence which had never been disclosed to it in the first place.

11. It is well-settled that while the authorities, in the exercise of their powers may grant or refuse to grant or refuse to renew the license, as in the present case. Once the scope of power is channelised to the statute, they are bound to follow its dictates. Here Section 17(3) gave the authorities choice to either suspend or cancel the license after notice. Surely, it cannot be contended that the notice proposing suspension could logically lead to cancellation of license. The impugned order is, therefore, illegal and a nullity as it offends principles of natural justice.

12. The writ petition has to, therefore, succeed. The impugned order is thereby quashed. Nothing states in these proceedings shall be considered as a reflection on the merits of the respondents' choice to take action, it deems appropriate, provided they do it in accordance with law.

13. The writ petition and the accompanying application are allowed in the above terms.

S. RAVINDRA BHAT
JUDGE

APRIL 08, 2009
‘ajk’