

Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 382 of 2023

Date of Decision: 13.05.2024

Shri. William Richmond Marbaniang

S/o (L) T.S. Richmond

R/o Wind Crest, Nongrimbah Road,

House No. 39, Shillong,

East Khasi Hills District, Meghalaya

::: Petitioner

-Vs-

1. **State of Meghalaya,**
Represented by the Chief Secretary,
Government of Meghalaya.

2. **State of Meghalaya,**
Represented by the Secretary,
Home Department, Government of Meghalaya.

3. **District Magistrate,**
East Khasi Hills, Shillong,
Meghalaya.

::: Respondents

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. N. Khera, Adv.

For the Respondent(s) : Mr. S.A. Sheikh, GA.

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

J U D G M E N T

1. Facts of the case as could be seen from this petition is that the petitioner herein was an Arms Licence Holder of 2(two) firearms, being a Cogswell and Harrison (0.12 Bore DBBL Gun) and one .22 Bore Rifle, made in Belgium FNB. Licence for such arms was issued by the competent authority on 20.10.1998 being number LN23434A21119.

2. The said licence was supposed to be renewed every three years which was done so till 01.01.2019 valid upto 31.12.2021, whereupon, the petitioner has then submitted the licence in the Office of the District Magistrate, East Khasi Hills District, Shillong for the process of renewal of the same.

3. The petitioner was then communicated vide order No. AE.23/32/2019/45, dated 19th May 2023 issued by the District Magistrate, Shillong that his application for renewal was rejected on the ground that he is said to be involved in Rynjah P.S. Case No 16(03) of 2007 under Section 302 IPC and that the same will be renewed till such case is dropped or dismissed by the court.

4. The petitioner then filed a representation dated 05.06.2023 before the Deputy Commissioner/respondent No. 2 which was not

responded to, compelling the petitioner to file another representation dated 20.07.2023 which was also not responded to, upon which the petitioner filed an appeal, dated 28.09.2023 before the respondent No. 2/Secretary, Home Department.

5. It was only after a number of representations and the appeal being filed did the respondent authority act upon the petition of the petitioner and vide communication dated 07.10.2023 issued by the Office of the District Magistrate, East Khasi Hills District, Shillong, has rejected the prayer for renewal of the said Arms Licence and has also directed that such Arms be deposited at the Laitumkhrah Police Station which was done so by the petitioner. Situated thus, the petitioner has now approached this Court with this instant writ petition.

6. Mr. N. Khera, learned counsel for the petitioner has submitted that the petitioner is a retired IPS Officer who had served the State for about 36 years or so, lastly in the capacity of the Director General of Police. Though, it is admitted that he is facing prosecution in connection with Sessions Case No. 76 (T) of 2013 under Sections 201/203 IPC before the Court of the Additional Sessions Judge, Shillong, it is however vehemently denied that he is actually involved in Rynjah P.S. Case No. 16(03) of 2007 under Section 302 IPC.

7. The learned counsel has also submitted that the grounds relied upon by the relevant authority for suspending the said Arms Licence of the petitioner is that he is involved in the said Rynjah P.S. Case No. 16(03) of 2007 and Section 14(3) read with Section 17(3) of the Arms Act, 1959 was invoked to justify the said action.

8. It is however submitted that since the initial issuance of the licence in the year 1998 till date, in fact, since the year 2007 when the petitioner is facing trial in the said criminal cases, there is nothing in evidence to prove that the petitioner is unfit to hold the said licence and also that by having such license, he is a threat to public peace and safety. Nothing in the impugned order was reflected that there was a proper application of mind by the relevant authority and no show cause or hearing was ever allowed to be presented by the petitioner.

9. The impugned orders have been passed in a mechanical manner without any application of judicious mind by the issuing authority, and considering the grounds and provisions of law invoked while suspending or refusing to renew the licence of the petitioner, no speaking order as is mandated under Section 17(5) of the said Arms Act, was passed to justify such action taken, further submits the learned counsel.

10. While referring to the affidavit-in-opposition filed by the respondent No. 3, the learned counsel has submitted that at para 7 and 9 of the same, the respondent No. 3 has averred therein that exclusive discretion lies with the District Magistrate who can exercise such discretion either to grant renewal or reject such application based on compelling circumstances and in the case of the petitioner, it was done so keeping in mind the aspect of public peace and security. Another reason cited is that the criminal cases pending against the petitioner only shows his criminal background, such reasons being the cause of the exercise of discretionary power of the issuing authority in denying renewal of the said licence. This, according to the learned counsel is a demonstration of an illegal and arbitrary action on the part of the issuing authority without any basis whatsoever.

11. In support of his contention, the learned counsel has cited the following judgments:

- i) Ajay Jayawant Bhosale v. Commissioner of Police, Pune City & Ors, SCC OnLine Bom 5019, para 13;
- ii) Ashok v. State of Maharashtra, 2018 SCC OnLine Bom 70, para 14 & 15;
- iii) Yaru Khan v. State of Raj & Ors, 2022 SCC Online Raj

2511, para 2.

12. Per contra, Mr. S.A. Sheikh, learned GA appearing for the State respondents has submitted that the facts as is stated are correct to the extent that the petitioner's Arms Licence was issued to him way back many years ago and was renewed from time to time, the validity of the last extension was till 31.12.2021. That the petitioner has applied for renewal of his said licence is also on record. However, on receipt of such application for renewal, the District Magistrate has sought for a report from the competent authority, that is, the Superintendent of Police, who has then filed his report indicating that the petitioner is facing trial in a criminal court for an offence under Section 302 IPC connected to Rynjah P.S Case No. 16(03) of 2007.

13. On consideration of the said report received, the issuing authority has then rejected the application for renewal of the Arms Licence of the petitioner. It is not a case of revocation or cancellation of the said licence since the licence is still with the petitioner, however, the condition is that as and when the said criminal proceeding is closed, the application will be considered then, submits the learned GA.

14. The learned GA has clarified that although, the impugned order uses the word suspension, the fact remains that it is not a case of

suspension of the said licence of the petitioner, since suspension or revocation or even cancellation would take place only if an adverse finding or report is found against the licence holder during the validity period of such licence, for which a show cause notice and thereafter passing of a speaking order is required, which is not the case herein.

15. The learned GA has also led this Court to the provision of Section 15 of the Arms Act, 1959 to submit that the said provision speaks of renewal of a licence, wherein under Sub-Section 3 of the said Section, it is provided that the provisions of Sections 13 and 14 which provide for grant of licence, the same process for renewal of a licence shall also be followed. Under Sub-Section 3 of Section 14, power is entrusted to the licensing authority to refuse to grant, and in this case, to renew the licence for which reasons for doing so shall be furnished to the applicant. The fact that the refusal to renew the licence of the petitioner on account of the said police report has therefore satisfied the relevant provisions of law and hence, no show cause notice or even a speaking order is required to be passed.

16. To buttress his contention, the learned GA has relied on the following cases:

- i) *Bharatial R. Halwai v. State of Goa & Anr*, 1999 SCC

Online Bom 50, para 3, 4 & 5;

ii) Md. Ziya Osman Qureshi v. State of Maharashtra & Ors,
2014 SCC OnLine Bom 4647, para 2, 6, 8, 9, 10, 11, 12
& 14;

iii) Chamal Lal Sharma v. State of Himachal Pradesh & Ors,
2020 SCC OnLine HP 1844, para 12.

17. This Court has given careful consideration to the submission and contention of the parties. A perusal of the impugned order, would show that upon receipt of the application for renewal of the Arms Licence of the petitioner, the respondent No. 3/District Magistrate had sought for a police report in this regard. The police report would indicate that the petitioner is involved in Rynjah P.S. Case No. 16(03) of 2007 under Section 302 IPC. Apparently, on consideration of such police report, the District Magistrate had deemed it fit and proper to exercise his discretion by refusing to renew the said licence and had called upon the petitioner to deposit the Arms in question at the respective police station.

18. From the impugned order, what is apparent is that the provision of Section 14 Sub-Section 3 as well as Section 17 Clause (b) of Sub-Section 3 has been taken recourse to. The said provisions are set out

herein below:

“14. Refusal of licences.—(3) Where the licensing authority refuses to grant a licence to any person it shall record in writing the reasons for such refusal and furnish to that person on demand a brief statement of the same unless in any case the licensing authority is of the opinion that it will not be in the public interest to furnish such statement.

17. Variation, suspension and revocation of licences.—(3) The licensing authority may by order in writing suspend a licence for such period as it thinks fit or revoke a licence—

(b) if the licensing authority deems it necessary for the security of the public peace or for public safety to suspend or revoke the licence; or”.

19. The licensing authority by citing Sub-Section 3 of Section 14 in the impugned order, the same would be taken as an admission that the renewal of the licence of the petitioner has been refused, the provision also provides that a brief statement of the reasons for such refusal shall be furnished to the licence holder. Apparently, what has been stated in the impugned order which can construed as the reason for such refusal is the fact that the petitioner is involved with Rynjah P.S. No. 16(03) of 2007 under Section 302 IPC.

20. There is no indication to conclude that the licensing authority had applied its subjective discretion, inasmuch as, except for a bald statement that the petitioner is involved in the said Rynjah P.S. Case, nothing is said about how he is involved in the case and as to whether he

is the only accused in the said case or that he is one of the co-accused, in case there are more than one accused persons. This statement was also contradicted by the petitioner who has asserted that he was never involved in the said Rynjah P.S. Case. At the most, he has admitted that he is involved in another criminal case, the offence being one under Sections 201 and 203 IPC, which are comparatively less heinous or are not so grave in nature as a case under Section 302 IPC.

21. In fact, when the matter was argued by the parties, this Court had made a pointed query to the learned GA for the State respondent to furnish the details of the said Rynjah P.S. Case, but the answer was not forthcoming. Therefore, in the absence of credible evidence in this regard, it may be assumed that the petitioner is not at all involved in the said criminal case aforementioned. Accordingly, inference may be drawn to conclude that the licensing authority had failed to apply its judicious discretion in the passing of the impugned order.

22. In this context, reference to the case of Ganesh Chandra Bhatt v. District Magistrate, Almora & Ors reported in AIR 1993 Allahabad 291 can be made, the same being relatable to the subject matter. At para 63 and 64, the Hon'ble Allahabad High Court has observed as follows:

“63. Very often arms licences are refused or

cancelled or suspended on arbitrary or untenable grounds. For example, sometimes an arm licence is refused on the ground that there are already some arms licences in the village and hence it would not be expedient to grant any more licences to people of that village. This is wholly arbitrary and illegal, since existence of some licences in the village can hardly be a reasonable ground to deny one a licence. In fact, it would amount to creating a monopoly in favour of existing licencees.

64. *Similarly, sometimes arms licences are suspended/cancelled on the ground of involvement in a petty crime like Sec. 323, 324 or 325, I.P.C. or proceeding under Section 107/117 or Section 145, Cr.P.C. This again is not a valid ground for impounding/cancelling or refusing to grant an arms licence. It is only where one is accused of a heinous crime or is a hardened criminal that such action can be taken.”*

23. Again, it may not be out of place to refer to the case of Kapildeo Singh v. State of Bihar & Ors reported in AIR 1987 Patna 122, wherein the full bench of the Hon’ble High Court of Patna answering a reference, viz; Would the registration and pendency of a criminal case for a major or capital offence justify the suspension or revocation of a licence under Clause (a) of sub-section (3) of Section 17 of the Arms Act. The High Court though, answering the reference in the affirmative, the observations made therein at para 11 would be relevant to the subject matter discussed herein, the extract of which is reproduced herein below:

“11. A strong note of caution, however, must be sounded in this context. It is not the pendency of any and every criminal case which would inflexibly warrant the suspension or revocation of a licence validly granted. A criminal case may range from a paltry traffic offence to the most horrendous capital crime. Whilst the pendency of the former may hardly provide an adequate basis under Section 17(3), in the case of the latter after notice and hearing of the explanation such action may well become necessary. Equally, the use or employment of the licensed weapon in the alleged crime might well be a relevant and added factor for consideration in the exercise of the discretion by the licensing authority. There is no gainsaying that licensed weapons are not to be allowed to degenerate into crime weapons. It bears repetition that sub-section (3) puts the matter in the subjective satisfaction of the licensing authority and inevitably the issue cannot be put in the procrustean bed of a precise definition or an exhaustive enumeration of situations in which such discretion may be exercised.”

24. The learned GA had reiterated that though, the word “suspended” has been used in the impugned order, in fact, what is meant is that the said licence of the petitioner is refused to be renewed and therefore, it is the case of non-grant of renewal and not suspension. If this submission is to be accepted, the reference to Section 17(3)(b) of the Arms Act, 1959 in the impugned order is misplaced and cannot be resorted to, to refuse renewal of the Arms Licence of the petitioner. However, even if for discussion’s sake, this Court look into the letter of

the provision of Clause (b) of sub-section (3) of section 17, such provision speaking of suspension or revocation of licence in view of security of the public peace or for public safety, looking into the antecedent of the petitioner, having been a very senior police officer, who had once held the post of Director General of Police of the State, it would be absurd to assume or even to contemplate a situation where his possession of licensed arms would be a threat to public peace and safety.

25. The case of Ajay Jayawant Bhosale(supra) cited by the petitioner at para 14 of the same, the Hon'ble High Court of Bombay in the context therein had observed as follows:

“14. Nothing was placed before us by the respondents to indicate that the petitioner had misused the licenced weapon at any point of time in past. The order of revocation of license refers to two criminal cases registered against the petitioner. In the facts we find that mere registration of criminal case/cases could not be a ground to revoke the license. The order shall indicate clearly that continuance of licence would be against public peace, safety and security.”

26. The case of Ashok(supra) also cited by the petitioner and the relevant paragraphs at 13, 14 & 15 referred to need not be elaborated as the contextual aspect of the same has been discussed hereinabove. Similarly, the case of Yaru Khan(supra) speaks more or less of the same

proposition.

27. The case of Bharatlal R. Halwai(supra) cited by the learned GA for the State respondent speaks of rejection of renewal of the Arms Licence on the basis of adverse police report. Also in the case of Md. Ziya Osman Qureshi(supra), the Hon'ble High Court of Bombay after hearing the parties on the subject has come to the conclusion that the concerned authorities taking note of the criminal case pending against the petitioner therein, and on finding that a speaking order have been passed while coming to such findings, the licence of the petitioner was not renewed. This is however not the case as far as the facts and circumstances in this instant petition is concerned. The case of Chamal Lal Sharma(supra) also cited by the learned GA is found not relevant.

28. On an overall analysis of the facts and circumstances and the law in this regard, this Court is of the considered opinion that the impugned order has been passed without any application of mind and hence, is deemed to have been arbitrarily done so to the detriment of the petitioner's cause.

29. This being the case, this Court hereby finds that the impugned order dated 19.05.2023 and the related appellate order dated 07.10.2023 cannot stand the scrutiny of law, the same are accordingly set aside and

quashed.

30. The petitioner is however directed to file a fresh application for renewal of his firearms and the licensing authority is to consider the same in accordance with law and related rules in the light of the observations made hereinabove. Needless to say, if the law of limitation applies to such proceedings, such period may be considered as condoned.

31. With the above-noted directions, this writ petition is accordingly disposed of. No costs.

Judge

Meghalaya
13.05.2024
"D. Nary, PS"