

**Court No. - 5**

**Case :-** WRIT - C No. - 9952 of 2023

**Petitioner :-** Hakimuddin

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy. Home Deptt. Lko. And 2 Others

**Counsel for Petitioner :-** Rajesh Kumar Srivastava

**Counsel for Respondent :-** C.S.C.

**Hon'ble Abdul Moin,J.**

1. Heard the learned counsel for the petitioner and learned Standing counsel appearing on behalf of the State-respondents.

2. Instant writ petition has been filed praying for the following main reliefs:-

*"1. Issue a writ, order or direction in the nature of Certiorari thereby quash impugned order dated 07.10.2023 annexed as Annexure No. 7 to this petition.*

*2. Issue a writ, order or direction in the nature of mandamus commanding the opposite parties specially opp. Party No. 2/ District Magistrate to restore and renew arm license No. 838/ADM/City/87 of the petitioner and also generate Unique Identification Number. "*

3. The contention of learned counsel for the petitioner is that the petitioner was having an arms license which was issued on 19.06.1987 from Rajasthan and subsequently was transferred to Uttar Pradesh. The last renewal of the license took place on 06.06.2018 by which it was renewed upto 17.05.2021 by the competent authority in District- Pratapgarh. Copy of the renewal is annexure 3 to the writ petition.

4. Subsequent thereto, the respondent no. 2 i.e District Magistrate, Pratapgarh vide impugned order dated 07.10.2023, a copy of which is annexure 7 to the petition has cancelled the arms license of the petitioner placing reliance on a report dated 29.09.2023 and Government orders issued from time to time per which it has been indicated that as the petitioner failed to get a Unique Identification Number (hereinafter referred to as "UIN") as such, the license has been cancelled.

5. Placing reliance on Rules 15 & 16 of the Arms Rules, 2016 (hereinafter referred to as "Rules, 2016") which have come into force w.e.f 15.07.2016, the

argument of the learned counsel for the petitioner is that a duty is cast upon the licensing authority while either granting or renewing a license to enter the data of the record locally in an electronic format specified by the Central Government and for generation of UIN. It is also contended that once the rules themselves provide that it is the duty of the licensing authority to generate the UIN and to upload it on the portal on the National Database of Arms License (hereinafter referred to as "NDAL") consequently, the order impugned by which the license of the petitioner has been cancelled on the ground of the petitioner not having obtained the UIN, is clearly an act not countenanced in the eyes of law and thus it is prayed that the impugned order be set aside with exemplary cost against the respondents who have failed to follow the statutory rules which have been issued in this regard.

6. On the other hand, learned Standing counsel on the basis of averments contained in the counter affidavit argues that it is the duty of the license holder to obtain the UIN number keeping in view the notification dated 22.01.2020, a copy of which is part of annexure CA-2 to the counter affidavit. He argues that the said notification provides that those license holder whose license has not been recorded on the NDAL portal, it should be ensured that the licenses are endorsed on the NDAL portal and a UIN is issued and those licenses which are not uploaded by 29.06.2020 on the NDAL portal should be considered as invalid w.e.f 30.06.2020. Considering this notification and a report dated 29.09.2023 submitted by the Additional Superintendent of Police indicating the said fact that the competent authority has passed the order dated 07.10.2023 by recording that as the petitioner's license is not having a UIN as such, his license is being cancelled.

7. Placing reliance on the aforesaid notification, the argument of learned standing counsel is that it was the duty of the petitioner to have obtained the UIN and to have had it endorsed on his license and he having failed to do so, no error has been committed by the respondent no. 2 in cancelling the license of the petitioner by means of the order dated 07.10.2023.

8. Responding to the same, the argument of the learned counsel for the petitioner

is that once a duty has been cast upon the licensing and renewing authority in terms of Rules 15 & 16 of the Rules, 2016 to generate the UIN and to upload it consequently, even if a notification dated 22.01.2020 has been issued the same would not resile from the fact that the duty has been cast upon the licensing authority in terms of the Rules, 2016 for having the UIN endorsed at the time of renewal as specifically provided in Rule 15 of the Rules, 2016 and thus, in case it is the licensing authority who has failed to discharge his duties, the burden thereof cannot be placed upon the petitioner in order to enable the licensing authority to cancel the license of the petitioner.

9. Heard the learned counsel appearing on behalf of the contesting parties and perused the records.

10. From the arguments as raised by the learned counsel appearing on behalf of the contesting parties and a perusal of records it emerges that the petitioner was having an arms license, the last renewal of which took place in District - Pratapgarh on 06.06.2018 per which the license was renewed upto 17.05.2021. Subsequent thereto, the licensing authority vide order impugned dated 07.10.2023 has cancelled the license of the petitioner by observing that in terms of the relevant notifications and the Government orders, as the petitioner has failed to obtain a UIN, consequently, as no license without a UIN can subsist subsequent to 30.06.2020, as such, has cancelled the license of the petitioner.

11. The question which is to be considered by this Court as to whether the licensing authority was empowered to cancel the license of the petitioner on the ground that the petitioner has failed to obtain the UIN ?

12. For answering the said question, the Court will have to consider the provisions of Rules 15 & 16 of the Rules, 2016 which for the sake of convenience are reproduced below:-

***"Rule 15 - Maintenance of records in electronic format and consolidation of licences***

*(1) Every licensing authority and the renewing authority specified in Schedule II, while granting a license or renewing a licence, thereof, shall enter the data of the record locally in an electronic format specified by the Central Government.*

(2) Every licensing authority and the renewing authority shall also enter such data in the NDAL system which shall generate a unique identification number (UIN) and with effect from the 2[30th June, 2020], any arms license without UIN shall be considered invalid.

(3) The UIN so generated under sub-rule (2) shall be unique for a licensee.

(4) Any existing licensee holding multiple licences in Form III shall on or before the 2[30th June, 2020] make an application for grant of a single licence in respect of all the firearms held by him under his UIN, to the concerned licensing authority:

*Provided that where the applicant applying a licence for restricted category of arms or ammunition specified in Schedule I is also a holder of a licence for permissible category of arms or ammunition specified in the said Schedule; or where the applicant, applying for permissible category of arms or ammunition is also a holder of a licence for restricted category of arms or ammunition specified in the said Schedule, the licensing authority concerned shall issue a new licence for such restricted or permissible category of arms or ammunition, as may be applicable, under the existing UIN of the licensee:*

*3[Provided further that separate licence either in book form or in electronic form shall be generated in case of each licence in Form II, Form III, Form IIIA and Form IV and in case of a licence in Form III, separately for restricted and permissible categories of arms and ammunition specified in Schedule I, with an overall ceiling of two firearms under a single UIN.]*

(5) The licensing authority on receipt of an application from a multiple licence holder under sub-rule (4) shall cancel the existing multiple licences of the applicant and issue in lieu thereof, a new licence endorsing therein, all the existing firearms of the said licensee.

(6) The period of validity of the new licence so issued by the licensing authority under sub-rule (5) shall be the farthest period as mentioned in any of the cancelled licences and the area validity endorsed on the new licence shall be the more extensive area in any of the cancelled licences.

#### **Rule 16 - Duty of licensing authority under NDAL**

(1) The licensing authority, while granting or renewing a licence or at the time of providing any allied service to any licensee under these rules shall ensure that the data of the transaction approved by him, is simultaneously updated in the electronic format locally and on the NDAL system under its log-in ID:

*Provided that the licensee shall not be held accountable for failure on the part of the licensing authority to update such data in the electronic format.*

(2) The licensing authority shall ensure compliance of delivery of different services specified in column (2) of Schedule V, within the time specified in column (4), of the said Schedule."

13. From a perusal of Rule 15 of the Rules, 2016 it emerges that the responsibility of maintenance of records in electronic format and consolidation of the licenses has been put on the shoulders of the licensing authority and the renewing authority as specified in Schedule II. Rule 15, of the Rules, 2016

categorically provides that every licensing authority and the renewing authority while granting a license or renewing a license thereof **shall** enter the data of the record locally in an electronic format specified by the Central Government. Every licensing authority and the renewing authority shall also enter such data in the NDAL system which shall generate a UIN and with effect from 30.06.2020, any arms license without UIN shall be considered invalid. Sub Rule (3) of Rule 15 of the Rules, 2016 provides that the UIN so generated under sub-rule (2) shall be unique for a licensee. Though sub Rule (4) of Rule 15 of the Rules, 2016 provides that an existing licensee holding multiple licenses in Form III shall on or before 30.06.2020 make an application for grant of single license in respect of all the firearms held by him under his UIN yet the said sub rule would not be attracted as it is not the case where the petitioner is holding multiple licenses.

14. Rule 16 of the Rules, 2016 also casts a duty on the licensing authority under NDAL while granting or renewing a license or at the time of providing any allied service to any licensee under these rules to ensure that the data of transaction approved by him is simultaneously updated in the electronic format locally and on the NDAL system under its log-in ID. The proviso to Rule, 16 of the Rules, 2016 also provides that the licensee shall not be held accountable for failure on the part of the licensing authority to update such data in the electronic format.

15. Thus, from a perusal of Rules, 15 & 16 of the Rules, 2016 it clearly emerges that a duty has been cast on the licensing or the renewing authority while generating or renewing a license to enter the data of the record locally in an electronic format and to generate the UIN. The proviso to Rule, 16 of the Rules, 2016 categorically provides that the licensee shall not be held accountable for failure on the part of the licensing authority to update the data in the electronic format.

16. Thus, it can safely be said from a perusal of Rules, 15 & 16 of the Rules, 2016 that the duty has been cast upon the licensing or renewing authority to ensure the generation of the UIN and for feeding of the same on the NDAL

portal.

17. In the instant case, the competent authority, though had renewed the license of the petitioner on 06.06.2018 i.e after the promulgation of the rules, 2016 which have come into force, having been published in the gazette, on 15.07.2016 yet it emerges that the licensing authority failed to discharge the duty which was entrusted upon him for generating the UIN and for uploading it on the NDAL portal. Merely placing reliance on the various Government orders that may have been issued from time to time including the notification dated 22.01.2020, the competent authority has cancelled the license of the petitioner by means of the order impugned dated 07.10.2023 putting the entire burden of generation and endorsement of the UIN on the shoulders of the petitioner. This act on the part of the licensing authority, as emerges from a perusal of the order dated 07.10.2023, is clearly not countenanced in the eyes of law and would also run foul to the statutory provisions of Rules 15 & 16 of the Rules, 2016.

18. So far as the notification dated 22.01.2020 is concerned which has been cited by the learned Standing counsel, a perusal of the same would indicate that the said notification has been issued by the State Government addressed to all the District Magistrates through out the State of Uttar Pradesh in pursuance to the Rule 15 of the Rules, 2016. By the said order, the State Government has required all the District Magistrates, while considering the notification issued by the Government of India on 03.01.2020, to take adequate steps to ensure that those valid license holders who are not entered in the NDAL portal, they should be entered by 29.06.2020 and UIN be provided to them and all such license holders who are not entered on the portal by 29.06.2020, their license should be considered as invalid. The said order nowhere stipulates that it is the license holders who are required to get their UIN or would get their details uploaded on the NDAL portal rather the District Magistrates of all the Districts are required to ensure the adherence of the provisions of Rule 15 & 16 of the Rules, 2016. This order cast a duty on the licensing and renewing authority to generate the said data and UIN and upload the same on the NDAL portal as such, there cannot be any occasion for shelving the said duty on the shoulders of the license

holder and thereafter cancelling the said license.

19. Keeping in view the aforesaid discussion, the Court is constrained to hold that the competent authority has failed to discharge the duty which was cast upon him while renewing the license of the petitioner as done on 06.06.2018 i.e for generating the UIN and for updating the same on the NDAL portal. The modus adopted by the licensing authority of cancelling the license of the petitioner is patently illegal and *de hors* the Rules, 2016.

20. Accordingly, the writ petition is allowed. The order impugned dated 07.10.2023, a copy of which is annexure 7 to the writ petition is quashed. The licensing authority is required to generate a UIN and to upload it on the NDAL portal within a period of four weeks from today. If the license of the petitioner has lapsed in the interregnum it be also extended after completion of necessary formalities.

21. As the Court has specifically observed of the licensing authority having specifically shirked and not discharged the mandatory duty which was cast upon him in terms of Rules, 2016 and the petitioner having been made the scapegoat of such act on the part of the licensing authority and in having approached this Court for the redressal of his grievances as such, the Court also proposes to impose exemplary cost on the respondents.

22. Accordingly, keeping in view the judgment of the Apex Court passed in the case of **Subrata Roy Sahara Vs. Union of India** reported in **(2014) 8 SCC 470**, this Court imposes a token cost of Rs. 25,000/- on the respondents.

23. Let the said cost be paid to the petitioner initially by the State Government within six weeks from today with the liberty to recover the same from the authority who is responsible in passing the order impugned.

**Order Date :- 21.2.2024**

Pachhere/-