

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.11223 of 2015
Date of Decision:06.01.2016

Ashok

. . . .Petitioner

Versus

State of Haryana and others

. . . . Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Rajesh K. Kataria, Advocate,
for the petitioner.

Mr.Pradeep Prakash Chahar, DAG, Haryana.

RAKESH KUMAR JAIN, J.

The petitioner, allegedly working as a Cashier at M/s Jai Kishan Sewa Kendra, retail outlet of Bharat Petroleum at Village Hatt, Safidon, applied for arms licence on Form 'A' on 17.4.2012. According to him, when the respondents did not decide his application, he sought an information under the Right to Information Act, 2005 and came to know that his case has not been recommended by the Police, therefore, he filed CWP No.5091 of 2013 in which communication issued by the Superintendent of Police, Sonapat dated 14.5.2012 was set aside and the Superintendent of Police, Sonapat was directed to look into the matter and after holding an appropriate enquiry submit the report to the District Magistrate, Sonapat, who was further directed to pass a speaking order regarding the entitlement of the petitioner for the issuance of

the arms licence. Pursuant to the order dated 26.8.2013, passed by this Court in CWP No.5091 of 2013, Superintendent of Police, Sonapat reported to the District Magistrate, Sonapat on 27.12.2013 that the matter has been enquired into again by the local Police Station, Baroda and it has been found that the petitioner is not facing any imminent threat and danger to his life and property and his application for arms licence was only for procuring a job and thus it was not recommended. The District Magistrate, Sonapat, vide his order dated 16.1.2014, filed the application of the petitioner while referring to the guidelines issued vide letter No.V-11016/16/2009 by the Home Ministry, Government of India and also the report of the Superintendent of Police, Sonapat. The said order dated 16.1.2014 was challenged by the petitioner by way of a statutory appeal, in terms of Section 18 of the Arms Act, 1959 [for short 'the Act'] which was dismissed by the Commissioner, Rohtak Division, vide his order dated 20.3.2015, *inter alia*, on the ground that holding of arms licence is merely a privilege and not a right and that the State Government or its authorities are competent to issue executive instructions to formulate conditions for the issuance, renewal or varying the arms licence.

Aggrieved against both the orders passed by the District Magistrate dated 16.1.2014 and the Commissioner, Rohtak Division dated 20.3.2015, the present petition has been filed.

Learned counsel for the petitioner has submitted that Section 13 of the Act regulates the 'Grant of Licences', Section 14 of the Act pertains to 'Refusal of Licences' and Section 17 of the Act is regarding 'Variation, Suspension and Revocation of Licences'. He has submitted that there is a mandate under Section 13(3)(a) of the

Act for grant of licence which is subject to refusal on account of the grounds mentioned in Section 14 of the Act and not otherwise. It is also submitted that the instructions of the Ministry of Home Affairs, Government of India cannot over-ride the provisions of the Act and has to operate in consonance with Section 13 & 14 of the Act. In support of his submission, he has relied upon a judgment of the Delhi High Court rendered in **“Sahil Kohli Vs. Additional Commissioner of Police” 2014(2) RLR 711** and a Full Bench judgment of Madhya Pradesh High Court rendered in **“Pratibha Chouhan and others Vs. State of M.P. and others” 2013(4) RCR (Criminal) 165.**

On the other hand, learned counsel for the State has submitted that besides filing CWP No.5091 of 2013, the petitioner had also filed CWP No.155 of 2015 which was disposed of as infructuous on 24.4.2015. It is further submitted that the application of the petitioner was not recommended by the Superintendent of Police, Sonapat because there is no threat either to his life or property from any quarter. In this regard, he has referred to the instructions of the Government of India No.V-11016/16/2009 dealing with the ‘Grant of Licence for Non-Prohibited Bore [NPB] Weapons’, which is also the case of the petitioner, in which it is provided that no licence may be granted without police verification which will include report on (i) antecedents of the applicant. (ii) assessment of the threat. (iii) capability of the applicant to handle arms, and (iv) any other information which the police authority might consider relevant for the grant or refusal of licence.

According to the respondents/State, there is no threat to the life and property of the petitioner, therefore, he was not found entitled to the arm licence.

In reply filed by respondents No.4 & 5, it is submitted that if licence is to be issued only on the alleged threat perception faced while working as a cashier then everybody, who is working as cashier either in the Banks or anywhere would have to be provided an arm licence and even otherwise there is always a threat to everybody's life and liberty for which arm licence can not be issued.

I have heard learned counsel for the parties and perused the record.

In order to appreciate the respective arguments, it would be relevant to refer to Sections 13 & 14 of the Act, which are reproduced hereunder: -

"13. Grant of Licences.- (1) *An application for the grant of a licence under Chapter II shall be made to the licensing authority and shall be in such form, contain such particulars and be accompanied by such fee, if any, as may be prescribed.*

1[(2) On receipt of an application, the licensing authority shall call for the report of the officer in charge of the nearest police station on that application, and such officer shall send his report within the prescribed time.*

(2A) The licensing authority, after such inquiry, if any, as it may consider necessary, and after considering the report received under sub-section (2), shall, subject to the other provisions of this Chapter, by order in writing either grant the licence or refuse to grant the same:

Provided that where the officer in charge of the nearest police station does not send his report on the application within the prescribed time, the licensing authority may, if it deems fit, make such order, after the expiry of the prescribed time, without further waiting for that report.]

(3) The licensing authority shall grant--

(a) a licence under section 3 where the licence is required-

(i) by a citizen of India in respect of a smooth bore gun having a barrel of not less than twenty inches in length to be used for protection or sport or in respect of a muzzle loading gun to be used for bona fide crop protection:

Provided that where having regard to the circumstances of any case, the licensing authority is satisfied that a muzzle loading gun will not be sufficient for crop protection, the licensing authority may grant a licence in respect of any other smooth bore gun as aforesaid for such protection, or

(ii) in respect of a point 22 bore rifle or an air rifle to be used for target practice by a member of a rifle club or rifle association licensed or recognised by the Central Government;

(b) a licence under section 3 in any other case or a licence under section 4, section 5, section 6, section 10 or section 12, if the licensing authority is satisfied that the person by whom the licence is required has a good reason for obtaining the same.”

“14. Refusal of Licences - (1)

Notwithstanding anything in section 13, the licensing authority shall refuse to grant-

(a) a licence under section 3, section 4 or section 5 where such licence is required in respect of any prohibited arms or prohibited ammunition;

(b) a licence in any other case under Chapter II,--

(i) where such licence is required by a person whom the licensing authority has reason to believe--

(1) to be prohibited by this Act or by any other law for the time being in force from acquiring, having in his possession or carrying any arms or ammunition, or

(2) to be of unsound mind, or

(3) to be for any reason unfit for a licence under this Act; or

(ii) where the licensing authority deems it necessary for the security of the public peace or for public safety to refuse to grant such licence.

(2) The licensing authority shall not refuse to grant any licence to any person merely on the ground that such person does not own or possess sufficient property.

(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.”

As per the procedure prescribed under Section 13 of the Act, the licensing authority, on receipt of the application, has to call for the report of the officer in-charge of the nearest police station

which has to be sent by him within the prescribed time. The licensing authority, after holding such enquiry as he consider necessary and receipt of the report, may either grant or refuse the licence but the licence under Section 13(a) of the Act has to be granted on the grounds mentioned under Section 14 of the Act for refusal.

According to the petitioner, in the case of **Sahil Kohli (Supra)**, it has been held that the licence cannot be refused even if there is no specific threat to the life and liberty of the applicant and in that case, the Court had also perused the standing orders issued by the Government in the matter of issuance of arms licence in which the requirement of having a specific threat to his life and liberty was not found mentioned, therefore, direction was issued for the issuance of arms licence but in the case of **Pratibha Chouhan and others (Supra)**, Full Bench of Madhya Pradesh High Court, has categorically held that the State Government or its authorities are competent to issue executive instructions or conditions for issuing, varying or renewing the arms licence if the aforesaid conditions are not contrary to the Act or the Arms Rules, 1962.

In the present case, the licensing authority has relied upon the report of the Superintendent of Police, Sonapat and got an enquiry conducted through SHO, Police Station, Baroda and DSP in which it was found that the petitioner had applied for the licence for seeking job and there has not been any threat to his life or property and therefore, while referring to the guidelines of the Government of India for the 'Grant of Arms Licence for Non-Prohibited Bore Weapon' wherein it has been provided that no licence may be granted without police verification, which will include the report of

antecedents of the applicant, assessment of the threat, capability of the applicant to handle arms and any other information which the police authority might consider relevant for grant or refusal of licence.

Thus, in the absence of any threat perception to petitioner either to his life or property, the arm licence, which is only a privilege as held by the various Courts, cannot be claimed as a matter of right and has been rightly refused.

Dismissed.

06.01.2016

Vivek

**(RAKESH KUMAR JAIN)
JUDGE**