

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

Civil Writ Petition No 24523 of 2013

Date of Decision: 9.8.2016

Vinod Kumar

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. K.S. Dhanora, Advocate
for the petitioner.

Mr. R.K. Doon, AAG, Haryana.

RAMESHWAR SINGH MALIK J. (ORAL)

Feeling aggrieved against the impugned orders dated 21.12.2010 (Annexure P-3) and 7.6.2011 (Annexure P-4) passed by respondents No. 2 and 3 respectively, revoking the arms licence of the petitioner, he has approached this Court by way of present writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of Certiorari for quashing the impugned orders.

Notice of motion was issued and in compliance thereof, written statement on behalf of respondents No. 2 and 3 has been filed.

Heard learned counsel for the parties.

The only ground for revoking the arms licence of the petitioner

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authenticity of this document

under Section 17 (3) of the Arms Act, 1959 ('the Act' for short), is that he was found a person of angry attitude. So far as involvement of the petitioner in two criminal cases is concerned, admittedly he has been acquitted in both the cases by the learned court of competent jurisdiction. At the time of passing of the impugned orders, petitioner was not facing any criminal trial. It is not even the pleaded or argued case on behalf of the respondents that any criminal case was pending against the petitioner at the time of passing of the impugned orders.

In the written statement filed on behalf of respondents No. 2 and 3, the only stand taken against the petitioner is that the impugned orders were rightly passed under Section 17 (3) (b) of the Act, because the licensing authority deemed it necessary for the security of public peace to revoke the arms licence of the petitioner. However, neither any supporting material has been referred to in the impugned orders, nor has been placed before this Court alongwith reply filed. Even if the licensing authority was intending to revoke the arms licence of the petitioner, deeming it necessary for security of the public peace or for public safety, it was least expected from it to refer to sufficient material available before it which might have been made the basis for arriving at such a conclusion.

No doubt, Section 17 (3) (b) of the Act grants a discretion to the licensing authority in this regard. However, it goes without saying that said discretion has to be exercised by the licensing authority in a judicious manner and not arbitrarily. As noticed hereinabove, since no sufficient material has been either referred to in the impugned orders or placed before this Court to support the impugned orders, the same cannot be upheld.

Since the respondent authorities have referred only to the

provisions contained in Section 17 (3) (b) of the Act, it would be appropriate to reproduce the same and it reads as under:-

“17 (3). The licensing authority may by order in writing suspend a licence for such period as it thinks fit or revoke a licence-

xx xx xx xx

(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”

Other provisions of Section 17 of the Act are not relevant for the purpose of decision of present case. A bare reading of the abovesaid provisions of law contained Section 17 (3) (b) of the Act would make it crystal clear that respondent-licensing authority has miserably failed to exercise its discretion in a judicious manner, while passing the impugned orders. Genuinely feeling aggrieved against the impugned order Annexure P-3 passed by the learned District Magistrate revoking arms licence of petitioner, he filed a statutory appeal before the Commissioner. However, appellate authority also fell in a serious error of law, while passing the impugned order Annexure P-4. Having said that, this Court feels no hesitation to conclude that both the impugned orders contained in Annexures P-3 and P-4 passed by the respondent authorities cannot be sustained, as both the orders have been found suffering from patent illegality.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the

considered opinion that present writ petition must succeed. The impugned orders have been found suffering from patent illegality because of which same are liable to be set aside. Accordingly, both the impugned orders (Annexure P-3 and P-4) are hereby set aside.

Consequently, Licensing Authority-District Magistrate, Hisar-respondent No.3 is directed to consider the matter afresh by passing an appropriate order, strictly in accordance with law and also keeping in view the abovesaid observations made by this Court. He shall pass an appropriate order at an early date and in any case within a period of six weeks from the date of receipt of certified copy of this order.

Resultantly, with the abovesaid observation made and directions issued, instant writ petition stands allowed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

9.8.2016
Ak Sharma

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No