

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No.1670 of 2002

Order reserved on: 11-4-2017

Order delivered on: 20-4-2017

Jaswant Singh Tyagi, S/o Shri Mithan Singh Tyagi, aged about 58 years, R/o House No.1562, Near Soni Flour Mill, Hanuman Nagar Road, Supela, Bhilai, Tehsil and District Durg (CG).

---- Petitioner

Versus

1. The State of Chhattisgarh, Through the Secretary, Department of Home Affairs, Mantralay, D.K.S. Building, Raipur.
2. The District Magistrate, Durg, District Durg (CG).
3. The Sub Divisional Magistrate, Durg, District Durg (CG).
4. The Superintendent of Police, Durg, District Durg (CG).
5. The Station House Officer, Police Station, Bhilai Bhatti, District Durg (CG).

---- Respondents

For Petitioner:	Mr. Uttam Pandey, Advocate.
For State/Respondents:	Mr. Gary Mukhopadhyay, Dy. G.A.
Ms. R. Shangeetha, I.A.S., Collector, Durg, is also present in person.	

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. Questioning legality, validity and correctness of the order dated 7-4-2000 passed by the Commissioner, Raipur Division, Raipur in Case No.41/C-147/97-98 by which the Commissioner has affirmed the order of the District Magistrate, Durg, dated 5-

8-1997 revoking the license of the petitioner granted under the provisions of the Arms Act, 1959, the petitioner has filed this petition for quashing of both the orders.

2. Mr. Uttam Pandey, learned counsel appearing for the petitioner, would submit that before revoking the license, no opportunity of hearing was granted to the petitioner and as such, his license has been revoked without giving opportunity of hearing and no reasoned and speaking order was passed revoking the petitioner's gun license and there were no material to invoke Section 17 (3) (b) of the Arms Act, 1959 and, therefore, the order passed by the learned District Magistrate duly affirmed by the Commissioner is liable to be quashed.
3. Mr. Gary Mukhopadhyay, learned Deputy Government Advocate appearing on behalf of the State of Chhattisgarh / respondents, who is assisted by Ms. R. Shangeetha, Collector, Durg, would submit that the petitioner was duly given a show cause notice before cancelling the license, on 6-4-1991, he replied to the same on 18-4-1991 and considering his reply and finding that number of cases have been registered against the petitioner and he is involved in criminal activities and further finding that continuance of license of the petitioner would be in danger under Section 17 (3) (b) of the Arms Act, 1959, and in order to maintain public peace and tranquility, revocation of

license is necessary, the petitioner's license has been revoked.

4. I have heard learned counsel for the parties, perused the impugned orders and considered their rival submissions made herein-above and also gone through the record with utmost circumspection.
5. It is well settled law that the right to carry non-prohibited fire arms does not come within the purview of Article 21 of the Constitution of India and it is not a fundamental right guaranteed under Article 21 of the Constitution. {See **Rana Pratap Singh v. State of U.P.**¹ Full Bench (Five Judges' Bench) judgment of the Allahabad High Court.}
6. It is also well settled that right to obtain license or possess arms or fire-arms under the Arms Act, 1959 is a privilege and not a right to be conferred by issuing license. (See **Ramprakash and others v. State of Madhya Pradesh and others**².)
7. Thus, after hearing learned counsel for the parties and on perusal of the record, it emerges that the petitioner was granted license and he was the license holder of 12 bore double barrel English gun having licence No.1898/12/74. On the basis of report submitted by the Station House Officer, Police Station Supela, the petitioner was served with a show cause notice dated 6-4-1991 as to why his license be not cancelled in exercise

1 1996 Cri.L.J. 665

2 AIR 1992 MP 151

of power conferred under Section 17 (3) (b) of the Arms Act, 1959. In that proceeding, the petitioner show caused on 18-4-1991 through his counsel by filing reply, however, in the mean time, his license was suspended by order dated 6-4-1991 and ultimately, by a reasoned order dated 1-8-1997, his license was revoked by the District Magistrate, Durg in exercise of power conferred under Section 17 (3) (b) of the Arms Act, 1959, holding that it is necessary for the security of public peace and safety to revoke the license of the petitioner. The gist of order dated 1-8-1997 was communicated to the petitioner vide order dated 5-8-1997.

8. It is clear from the record that the petitioner did not challenge the legality and validity of the order dated 1-8-1997, but only challenged the communication dated 5-8-1997 by filing a statutory appeal under Section 18 of the Arms Act, 1959 before the Commissioner, Raipur Division, Raipur. The learned Commissioner while dismissing the appeal by the impugned order clearly recorded that the petitioner was granted opportunity to show cause before cancelling his license and the order of the District Magistrate is a reasoned and speaking order and satisfaction was also recorded by the District Magistrate that for maintaining public peace and tranquility, revocation of the petitioner's gun license is necessary, as also the petitioner is found involved in undesirable criminal

activities. In the writ petition filed before this Court, the principal submission raised by the petitioner with vehemence is that he was not given reasonable opportunity of hearing before cancelling his license. The learned Commissioner - the appellate authority has clearly recorded finding in the impugned order that the petitioner was given show cause notice dated 6-4-1991 to which he replied by his duly appointed counsel on 18-4-1991 and thereafter only by order dated 1-8-1997 finding necessary conditions for pressing into service Section 17 (3) (b) of the Arms Act, 1959 available, his license was revoked. So, this submission that there was no proper opportunity of hearing holds no water. Even otherwise, the petitioner has filed copies of show cause notice and reply which clearly establish that he was given fullest opportunity to defend himself and it cannot be held that both the authorities i.e. the licensing authority, District Magistrate, and the appellate authority, the Commissioner, are unjustified in holding that opportunity of hearing was afforded to the petitioner.

9. The next submission made was that there is no material to invoke Section 17 (3) (b) of the Arms Act, 1959. Section 17 (3) (b) of the Arms Act, 1959 provides as under: -

“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 license; or”

10. A focused study of Section 17 (3) (b) of the Arms Act, 1959 would show that the licensing authority if deems it necessary for the security of public peace or public safety, is empowered to suspend or revoke the license. The exercise of power under the said provision contemplates a fact finding enquiry to satisfy regarding existence of circumstances that if the incumbent is allowed to hold the license, the same would cause breach of peace and security. It is the objective satisfaction of the District Magistrate which is contemplated under Section 17 (3) (b) of the Arms Act, 1959 regarding existence of the circumstances.
11. In the instant case, show cause notice issued to the petitioner clearly states that the petitioner is involved in seventeen cases of theft, he has a criminal background and he has allowed the criminals to stay in his house. The petitioner has replied the show cause notice. A report from the Station House Officer, Police Station Supela has also been obtained and on the basis of that report, satisfaction has been reached by the District Magistrate by recording the findings on the basis of which he has reached to the conclusion that it is imperative to maintain public peace and safety by revoking the license of the petitioner by order dated 1-8-1997 which has been said to be a reasoned and speaking order by the appellate authority – the

Commissioner. It is proper to mention here that the order dated 1-8-1997 revoking the license of the petitioner was not challenged by the petitioner before the appellate authority and only the communication dated 5-8-1997 was challenged. Even before this Court in the writ petition filed, neither the copy of the order dated 1-8-1997 nor the order dated 5-8-1997 was brought on record. Therefore, this Court was not in an advantageous position to look into the contents of those orders except to rely upon the order passed by the Commissioner in which he has clearly said that the District Magistrate has passed order dated 1-8-1997 which is a reasoned and detailed order stating that 26 cases have been registered against the petitioner and the petitioner was found involved in suspicious and undesirable activities and that continuance of license in favour of the petitioner is likely to cause breach of public peace and tranquility and therefore it was a fit case to revoke the license. The Commissioner has also repelled the petitioner's argument that the order revoking license is a non-speaking and not a reasoned order. The petitioner without filing copy of the order dated 1-8-1997 and 5-8-1997 cannot be allowed to contend that the order passed by the learned District Magistrate is a non-speaking and non-reasoned order and no satisfaction to invoke Section 17 (3) (b) of the Arms Act, 1959 has been arrived by the learned District Magistrate. The findings recorded by the two

Courts below are concurrent and based on the material available on record.

12. As a fallout and consequence of aforesaid discussion, I do not find any infirmity or illegality in the order passed by the District Magistrate revoking the license of the petitioner which was duly affirmed by the Commissioner by the impugned order. The writ petition deserves to be and is accordingly, dismissed, but without costs.

Sd/-
(Sanjay K. Agrawal)
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

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Versus

The State of Chhattisgarh and others

HEAD NOTE

Right to obtain license or possess fire-arms under the Arms Act, 1959
is privilege and not a right.

आयुध अधिनियम, 1959 के अंतर्गत, आयुध रखने अथवा अनुज्ञप्ति प्राप्त करने का
अधिकार एक विशेषाधिकार है ना कि अधिकार ।