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

CWP-17265-2015

Date of decision : 11.01.2017

Sisan Pal

... Petitioner

Versus

District Magistrate-cum-Deputy Commissioner, Barnala and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Tribhawan Singla, Advocate
for the petitioner.

Ms. Monica Chhibber Sharma, DAG, Punjab.

AMIT RAWAL, J. (ORAL)

The petitioner has challenged the order dated 22.06.2015 (Annexure P-2) i.e. information received under the Right to Information Act, whereby his application for issuance of Arms Licence has been rejected.

Mr. Tribhawan Singla, learned counsel for the petitioner submits that though, he had applied for Arms Licence vide application dated 22.06.2012 with respect to a Revolver/Pistol .22 bore. The local police had submitted its report dated 18.07.2012 (Annexure P-1), whereby the Senior Superintendent of Police, Barnala, had issued recommendations. However, Deputy Commissioner after affording the opportunity of hearing, has declined the licence by relying upon the instructions dated 31.03.2010 i.e. in case the person does not have any threat perception, then he can be refused

the Arms Licence.

He further submits that such a instruction is contrary to the provisions of Article 21 of the Constitution of India as the matter pertaining to the acquisition of arms and ammunition is governed by the Arms Act, 1959 (for short 'the 1959 Act') and Rules framed thereunder. The Arms Rules, 1962 provide for acquisition and possession of fire arms license by individuals. The instructions cannot override the statutory provisions of law. The petitioner is not falling in any of the disqualifications under the Arms Act for disentitlement, thus, the order, under challenge, is not sustainable and liable to be set aside.

Ms. Monica Chhibber Sharma, DAG, Punjab, submits that the impugned order under challenge is perfect, legal and justified and does not call for any interference. There is no scope of "Judicial Review" as the same is based upon the instructions (Annexure R-1). She has drawn the attention to the relevant portion of the instructions which reads thus:-

“Application for grant of NPB arms licenses may be considered from persons who may face or perceive grave and imminent threat to their lives, for which the licensing authority will obtain an assessment of the threat faced by the persons from the police authorities.”

It is, in this backdrop of the matter, the Deputy Commissioner declined the Arms Licence.

I have heard the learned counsel for the parties and considered the arguments and of the view that writ petition is liable to be allowed for the following reasons:-

The provisions of Arms Act particularly Section 3 (1) of the 1959 Act provide that no person can acquire or possess or carry any fire arm

or ammunition unless he holds in this behalf a licence issued in accordance with the provisions of the Act and Rules framed thereunder. Similarly sub-Section 2 of Section 3 of the 1959 Act permits a person to acquire and have in his possession of a weapon, at any time, not more than three fire arms, but the provisions of Section 9 of the 1959 Act prohibits the person, who had not completed 21 years of age or has been sentenced on conviction of any offence involving violence or moral turpitude to imprisonment for any term for a period of five years after the expiration of the sentence. The recommendation of the SSP, Barnala, itself, is a nomenclature for granting the licence. For the sake of brevity, the recommendation of the SSP, Barnala and paragraph 1 of the Affidavit of the Deputy Superintendent of Police, Sub Division, Barnala, reads as under:-

“Declaration : I declare on oath that above application is true and correct as per my knowledge and belief. If at any stage, the information supplied by me is found wrong then I shall be liable to be convicted under Arms Act, 1959, Arms Act, 1962 and the acts made by the Central Government from time to time.

For Office use : No.1666/LPA

Sd/-

Signature of applicant

The report from Senior Superintendent of Police within three weeks:-

Police Dispatch No.83-L/CPRC dated 17.08.2012

Sd/- Additional District Magistrate, Barnala

Recommended – *Sd- and Seal Senior Superintendent of Police, Baranala 12/9”*

Paragraph 1 :

That at the very outset, it is submitted that Sisan Pal, present petitioner has applied for the grant of arms license N.P.B.

Revolver, pistol to the Office of District Magistrate, Barnala and report from Senior Superintendent of Police, Barnala was asked for. In response to the above, the matter was got verified through S.H.O., P.S. City Barnala and on the basis of recommendation made by the S.H.O., P.S. City Barnala, case of the petitioner for the grant of arms license was recommended by Senior Superintendent of Police, Barnala and report to this effect was sent vide No.83-L/CPRC dated 17.08.2012 to the District Magistrate, Barnala. However, perusal of record further revealed that the arms license of the petitioner was rejected by the District Magistrate, Barnala after giving personal hearing to the petitioner on 19.09.2012 with the observation that the same is not covered under the instructions issued by the Government of Punjab vide letter No.11016/16/2009/Arms dated 31.03.2010.”

In my view, the instructions cannot override the statutory provisions of law.

For the foregoing reasons, the impugned order, under challenge, is not sustainable, much less, fallacious and arbitrary and the same is hereby set aside.

CWP stands allowed.

Consequential effect of the application will automatically follow.

11.01.2017

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**