

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

**CWP No.2919 of 2017
Date of decision:10.03.2017**

Bhupinder Singh and another ... Petitioners

Vs.

State of Punjab and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Harnaresh Singh Gill, Advocate
for the petitioners.

Mr. Yatinder Sharma, Addl.A.G.Punjab.

Mr. Namit Kumar, Advocate
for respondent No.2.

AMIT RAWAL J. (Oral)

The petitioners are aggrieved of the impugned order dated 01.02.2017 (Annexure P-10) passed by respondent No.3- District Magistrate, vide which direction has been issued to deposit the licensed weapons issued for self-protection without complying the order dated 31.01.2017 (Annexure P-9) of this Court.

Mr. H.N.S.Gill, learned counsel appearing on behalf of the petitioners submits that earlier, petitioners had approached this Court vide CWP No.1173 of 2017 and this Court, vide order dated 31.01.2017, disposed of the writ petition with a direction to respondent No.3 to decide the case of the petitioners as per the representations, Annexure P-4 and P-5, whereby, there was a reference to the instructions (Annexure P-8), wherein,

it has been held that as and when the elections, General Elections/Bye-elections, are held in any of the State, the Election Commission of India had issued instructions dated 08.01.2007 and 01.09.2009 as has been referred to by Mr. Namit Kumar, learned counsel representing respondent No.2 that the Commission for reviewing of the detailed assessment of the license holders categorized in paragraphs 3.10 and 3.11 of the instructions dated 01.09.2009, for the purpose of review and assessment of all licence holders, Screening Committee is directed to be constituted in every District and in every Commissionerate area which consist of the District Magistrate and the Superintendent of Police and also Commissioner of Police (Admn.) and Joint/Additional Commissioner of Police (Admn.), which shall commence the work of screening from the date of announcement of election by the Election Commission and the cases of all licence holders as mentioned in para 3.10 shall be placed before the Screening Committee. The sportsperson, who are the members of the National Rifle Association, have been exempted. The District Magistrate had not simply passed the order by taking into consideration the instructions and simply relied upon report of SSP, therefore, there has not been any regard to the orders, particularly the factum of instructions which had been specifically indicated in the representations (Annexure P-4 and Annexure P-5).

Mr. Yatinder Sharma, learned State Counsel has filed a reply in the Court which is taken on record. He relies upon the vernacular copy of Annexure R-3/1 regarding deposit of 100% weapons, whereby, the

Commissioner has also surrendered the licensed weapon to the Deputy Commissioner, in view of the General Elections. He further submits that the instructions apply to all the license holders and therefore, it was not a case of exemption. The elections are now over and the licensed weapons would be released within one month.

I have heard learned counsel for the parties and appraised the paper book.

It would be apt to reproduce the paragraphs 3.10 and 3.11 of the instructions dated 01.09.2009, which read as under:-

Deposit of Licensed Arms

“3.10 Immediately after the announcement of elections, District Magistrate shall make a detailed and individual review and assessment (in accordance with the prevalent State laws) or all licence holders so that licensed arms in those cases where they consider it essential are impounded in order to ensure maintenance of law and order so essential for ensuring free and fair elections. These arms should be deposited with the district authorities. Among cases which may need to be reviewed are the following:-

(a) Arms licenses of persons released on bail,

(b) Arms licenses of persons having a history of criminal offences and

© Arms licenses of persons previously involved in rioting at any time but especially during the election period. The above

categories are only illustrative and not exhaustive.

3.11 As per the above-referred guidelines laid down by the Bombay High Court, for such review and assessment of all licence holders;

(a) There shall be a Screening Committee in every District and in every Commissionerate area. In the District, the Screening Committee shall consist of the District Magistrate and the Superintendent of Police. In the Commissionerate area, it shall consist of the Commissioner of Police (Admn) and Joint/Additional Commissioner of Police (Amn).

b) The Screening Committee shall commence the work of screening from the date of announcement of election by the Election Commission and it shall complete the exercise of screening in respect of licences placed before it as far as possible before the date of issue of notification of elections.

c) Cases of all licence holders as mentioned in para 3.10 above shall be placed before the Screening Committee.

d) On receipt of report from the Screening Committee, the licensing authority shall issue notice before the last date fixed for withdrawal of candidature to the individual licence holder for depositing his arms and inform the licence holder that failure to deposit the arms as directed would result in prosecution under Section 188 of the I.P.C as stated in clause 3.11 (g).

e) The licence holder thereafter shall deposit his arms forthwith and in any case within a period of seven days from the date of receipt of the notice. The Licensing Authority shall give proper receipt of the licence holder.

f) The decision taken by the Screening Committee shall be final.

g) Any licence holder who fails to deposit arms within the period specified above shall be liable for prosecution under Section 188 of the Indian Penal Code.”

On co-joint reading of the aforementioned paragraphs, category of persons are required to deposit the licensed weapons owing to election but the petitioner does not fall in that category yet has been called upon to deposit the weapon, though sought the exemption but the same has not been taken into consideration.

I am of the view that the order under challenge has been passed in a most sketchy and mechanical manner, particularly when this Court specifically directed to decide the matter with regard to exemption in view of the representations, Annexures P-4 and P-5. The surrendering of a weapon by the Commissioner pales into insignificance as he is security personnel.

It is a specific pleaded case of the petitioners that they are commission agents, who deal in cash and for the protection of their life and liberty, they need licensed weapons. All these factors were not weighted in the mind of the authority below, much less no adherence to the instructions.

Resultantly, the impugned order is hereby set aside. Writ petition stands allowed. Respondents are directed to give the licensed weapon to the petitioner forthwith.

(AMIT RAWAL)
JUDGE

March 10, 2017
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No