

CWP No.19478 of 2016

[1]

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

**CWP No.19478 of 2016
Date of decision:25.01.2018**

Balwinder Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Vivek Goel, Advocate,
for the petitioners.

Ms. Bhavna Gupta, DAG, Punjab.

Rakesh Kumar Jain, J.

The petitioner is aggrieved against the order passed by the District Magistrate, Faridkot, by which his arms licence has been suspended and the order dated 16.03.2016 by which his statutory appeal preferred under Section 18 of the Arms Act, 1959 (hereinafter referred to as the "Act") has been dismissed.

In brief, the petitioner was having an arms licence no.71/P.S. Jaitu/D.M./Faridkot of 12 bore gun bearing no.1874/4433. The said licence was renewed till 12.11.2013. The petitioner applied for renewal of his licence after depositing the requisite fee. The District Magistrate asked for the report from the police department. He was informed vide letter no.2755/RAL/CPRC dated 04.12.2013 that the petitioner was involved in four criminal cases but he has been acquitted in two cases and released on probation in the other two. Thus, they recommended that the arms licence of the petitioner may not be renewed. The District Magistrate, vide his impugned letter dated 10.02.2015,

suspended the arms licence of the petitioner in terms of Section 17(3) of the Act and directed him to deposit his arm in the concerned police station or the gun house. Aggrieved against the said order, the petitioner preferred the statutory appeal under Section 18 of the Act before the Divisional Commissioner but it was dismissed only on the ground that the petitioner had been involved in four criminal cases though he had been acquitted in two cases and released on probation in the other two.

Counsel for the petitioner has submitted that the petitioner was involved in four criminal cases. The detail of the said four cases is as under:-

- “(i) U/s 324/323/34 IPC, FIR No.47 dated 17.05.2005, P.S. Jaitu and he has been acquitted by Sh. B.K.Mehta, Learned JMJC, Faridkot vide order dated 02.05.2009 as the compromise was effected with the complainant.
- (ii) U/s 427/324/323/379/440/148/149/326/354/120-B IPC, FIR No.64 dated 28.04.1996, Police Station Jaitu in which he has been released on probation by imposing fine of Rs.25,000/- vide order dated 21.07.2012 by the concerned court.
- (iii) U/s 341/506/323/148/149 IPC, FIR No.72 dated 23.04.2006, P.S. Jaitu in which Sh. Sandeep Josan, learned JMJC Faridkot vide order dated 12.10.2010 has been acquitted him as the offence was not proved.
- (iv) U/s 307/324/323/148/149 IPC, FIR No.197 dated 22.09.2006, P.S. Jaitu in which Sh. Fatehdeep Singh, Learned Sessions Judge, Faridkot released him on probation for one year by imposing Rs.25,000/- as fine.”

It is further submitted that FIR No.64 was of the year 1996, whereas FIR No.72 was of the year 2006, in which the petitioner has been acquitted and FIR No.47 was of the year 2005 and FIR No.197 was of the year 2006 in which the petitioner has been released on probation whereas the arms licence of the petitioner was renewed till 12.11.2013. It is further submitted

that the petitioner has never misused the arm as it has not been used in any of the aforesaid cases and he is, thus, not a threat to the peace. The petitioner relied upon various decisions of this Court rendered in the cases of **Gurdev Singh vs. State of Punjab**, 1993(2) RRR 629, **Mahender Singh vs. State of Haryana and others**, 2011(3) PLR 693, **Sukhpal Singh vs. State of Punjab and others**, 2016(2) PLR 629 and **Rakesh Kumar vs. Principal Secretary to Government of Punjab and others**, 2014(3) PLR 224.

On the other hand, counsel for the respondents has submitted that the Ministry of Home Affairs, Government of India, has issued instructions for the grant of arms licence. It is submitted that licence of a Non-Prohibited Bore (NPB) weapon cannot be granted without police verification which may include the report about the antecedents of the applicant, assessment of threat, capability of the applicant to handle arms and any other information which the police authority might consider relevant for the grant or refusal of licence. It is submitted that since the petitioner had been involved in four criminal cases in the past, out of which, even though he had been acquitted in two cases but in two other cases he has been convicted and released on probation, therefore, it would not be safe to allow the petitioner to carry the arm with a licence as it could be a threat to the peace.

I have heard learned counsel for the parties and examined the available record with their able assistance.

Section 3 of the Act provides that no person shall acquire, have in his possession, or carry any firearm or ammunition unless he holds in this behalf a licence issued in accordance with the provisions of the Act and the rules made thereunder. Section 13 of the Act deals with the grant of licence,

Section 14 with the reasons for refusal of licence, Section 15 in regard to the duration and renewal of licence and Section 17 with the variation, suspension and revocation of licence. The Central Government has also issued instructions for the grant of arms licence in which it has dealt with the grant of licence for Prohibited Bore (PB) and Non-Prohibited Bore (NPB) weapons, grant of licences under family heirloom policy, quantity and use of ammunition, grant of licences to overseas citizens of India and renewal of arms licence etc. The condition for grant of arms licence for Non-Prohibited Bore (NPB) weapons are as under:-

“(ii) Grant of Arms Licence for Non-Prohibited Bore (NPB) weapons

The arms licences for acquisition of NPB weapons are considered by the State Government/DM concerned. At present, there are no norms for grant of NPB weapons and some State Governments may be issuing arms licences liberally. It has been decided that:

- a) Applications for grant of NPB arms licences 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.
- b) 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. Steps are being taken to delete the proviso to Sec. 13(2A) of the Arms Act, 1959.
- c) The police authorities may be advised to send the police report within 45 days positively failing which the police officials concerned may be liable for action.
- d) The licensing authority may call for any information/documents such as voter ID card, ration card or any

other documents which it may consider necessary to verify the bonafides of the applicant and to ensure that the applicant resides within its jurisdiction.

e) The licensing authority shall be obliged to take into account the report of police authorities called for under section 13(2) before granting arms licences and no arms licence may be issued without police verification.”

And the conditions for renewal of arms licence are as under:-

“viii) Renewal of Arms licences.

It has been decided that at the time of renewal, re-verification of antecedents may be done by the DM through police authorities (i) in cases where DM/Licensing Authority have any doubt, (ii) in other cases, after six years i.e. every alternate cycle, when the licence comes up for renewal and (iii) in all those cases where the licence has been issued by another licensing authority. In the last mentioned case, verification of the issue of licence from the issuing authority may also be stipulated along with police verification, before allowing renewal. Police authorities will be allowed a period of 60 days to send their report. It is also requested that the State Govt. may check the feasibility of advising all DMs to initiate the process of seeking police re-verification six months in advance, as the full record of a licensee is available with the DMs.

Since it is a case of renewal of licence, therefore, Section 15 of the Act would come into play, which read as under:-

“15. Duration and renewal of licence- (1) A licence under section 3 shall, unless revoked earlier, continue in force for a period of three years from the date on which it is granted:

Provided that such a licence may be granted for a shorter period if the person by whom the licence is required so desires or if the licensing authority for reasons to be recorded in writing considers in any case that the licence should be granted for a shorter period.

(2) A licence under any other provision of Chapter II shall, unless revoked earlier, continue in force for such period from the

dare on which it is granted as the licensing authority may in each case determine.

(3) Every licence shall, unless the licensing authority for reasons to be recorded in writing otherwise decides in any case, be renewable for the same period for which the licence was originally granted and shall be so renewable from time to time, and the provisions of section 13 and 14 shall apply to the renewal of a licence as they apply to the grant thereof.”

The Competent Authority has suspended the licence of the petitioner under Section 17 of the Act, which read as under:-

“17. Variation, suspension and revocation of licences- (1) The licensing authority may vary the conditions subject to which a licence has been granted except such of them as have been prescribed and may for that purpose require the licence holder by notice in writing to deliver-up the licence to it within such time as may be specified in the notice.

(2) The licensing authority may, on the application of the holder of a licence, also vary the conditions of the licence except such of them as have been prescribed.

(3) The licensing authority may by order in writing suspend a licence for such periods it thinks fit or revoke a licence –

- (a) if the licensing authority is satisfied that the holder of the licence is 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 is of unsound mind, or is for any reason unfit for a licence under this Act; or
- (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
- (c) if the licence was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the licence or any other person on his behalf at the time of applying for it; or

- (d) if any of the conditions of the licence has been contravened; or
 - (e) if the holder of the licence has failed to comply with a notice under sub-section (1) requiring him to deliver-up the licence.
- (4) The licensing authority may also revoke a licence on the application of the holder thereof.
- (5) Where the licensing authority makes an order varying a licence under sub-section (1) or an order suspending or revoking a licence under sub-section (3), it shall record in writing the reasons therefor and furnish to the holder of the licence 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.
- (6) The authority to whom the licensing authority is subordinate may by order in writing suspend or revoke a licence on any ground on which it may be suspended or revoked by the licensing authority; and the foregoing provisions of this section shall, as far as may be, apply in relation to the suspension or revocation of a licence by such authority.
- (7) A court conviction the holder of a licence of any offence under this Act or the rules made thereunder may also suspend or revoke the licence :
- Provided that if the conviction is set aside on appeal or otherwise, the suspension or revocation shall become void.
- (8) An order of suspension or revocation under sub-section (7) may also be made by an appellate court or by the High Court when exercising its powers of revision.
- (9) The Central Government may, by order in the Official Gazette, suspend or revoke or direct any licensing authority to suspend or revoke all or any licences granted under this Act throughout India or any part thereof.
- (10) On the suspension or revocation of a licence under this section the holder thereof shall without delay surrender the licence to the authority by whom it has been suspended or revoked or to such other authority as may be specified in this behalf in the order of suspension or revocation.”

The reason for suspension of arms licence of the petitioner is that the petitioner had been found involved in four criminal cases in the past. It is pertinent to mention here that the petitioner was acquitted in two cases i.e. FIR No.47 dated 17.05.2005 and FIR No.72 dated 23.04.2006 and in FIR No.64 dated 28.04.1996 and FIR No.197 dated 22.09.2006, he has been released on probation. Thus, the petitioner has not repeated any offence after the year 2005/2006 and apparently he has not been a threat to anyone in the last 10 years. Moreover, there is no allegation that he had ever misused the arms in any of the cases in which he was shown to have been involved.

In **Gurdev Singh's case (supra)**, the applicant was convicted ten or eleven years prior to grant of arms licence and this Court held that it cannot be made a ground for cancellation of licence particularly when during the intervening period there was no allegation against him.

In **Rakesh Kumar's case (supra)** also, the applicant was sentenced which was reduced to the period already undergone and it was held that if the case of renewal of licence of the petitioner cannot be considered till five years as per Section 9(1)(a)(ii) of the Act, then the said period had already expired.

In **Sukhpal Singh's case (supra)**, it was held that if the applicant had not misused the fire arm and had been acquitted because of a compromise between the parties, then he would not be a threat to the public peace.

In **Mahender Singh's case (supra)**, it was held that mere conviction in a criminal case without a definite finding of threat to such peace or safety, in the manner contemplated under Section 17(3)(h) of the Act, the licence cannot be suspended or revoked.

Thus, in view of the aforesaid law laid down by this Court and the fact that the petitioner had never used his .12 bore gun, which he had carried with the licence granted under the Act, in any of the criminal cases in which he was involved and that those matters are more than 10 years old, the suspension of the licence of the petitioner by the respondents is patently illegal.

Consequently, the present writ petition is hereby allowed and the impugned order(s) are set aside.

January 25, 2018
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned:
Whether Reportable:

Yes/No
Yes/No