

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

CWP-26634-2018

Date of decision: 22 .5.2019

Jaikishan

...Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr.Ankur Sidhak, Advocate for
Mr.Rajesh Khandelwal, Advocate for the petitioner

Mr.Vivek Saini, DAG, Haryana

Mr.Manjeet Singh, Advocate for respondent No.6.

JITENDRA CHAUHAN, J.

Petitioner Jaikishan, an arms dealer and a convict, has preferred the present writ petition under Articles 226/227 of the Constitution of India for quashing the orders dated 8.5.2018 (Annexures P-4 and P-5) passed by Sub Divisional Officer (Civil), Jind in the enquiry conducted on the direction of the Deputy Commissioner, Jind by which respondent No.6 was absolved of the charges.

As per the case of the petitioner, 18 arms licence were issued by the office of District Magistrate, Jind without signatures of the District Magistrate as required under law. During the enquiry conducted by the Deputy Commissioner, it has surfaced that it is the practice in the office of the District Magistrate. However, the reasons for introducing such practice has not been explained.

At this stage, learned counsel for respondent No.6 has filed reply in the Court today, which is taken on record. He states that there is no allegation of *mala fide* practice, which had been going on in the office of District Magistrate. The licences were issued under *bona fide* belief that once the approval is there by the District Magistrate, he could issue the licence.

It has been brought to the notice of the Court that the petitioner is an arms dealer and is a convict in case FIR No. 31 dated 25.4.2002, registered under Sections 302, 109, 120-B read with Section 34 IPC and Section 25 of the Arms Act at Police Station Safidon and in two FIRs i.e. FIR No.422 dated 29.12.2014, registered under Sections 323, 452, 506 read with Section 34 IPC, Police Station Safidon and FIR No. 300 dated 7.7.2016, registered under Sections 323, 506 read with 34 IPC, Police Station Safidon, he is facing trial. He had a grouse against respondent No.6. The complaint has been filed with ulterior motive, as respondent No.6 had dealt with the file of the petitioner, who allegedly had purchased the municipal land, wherein respondent No.6 had advised him to file review application alleging some irregularities by the petitioner.

Heard.

This Court had passed the following order on 15.1.2019:-

“A short reply by way of affidavit of District Magistrate/Deputy Commissioner, Jind on behalf of respondent Nos. 1 to 2 & 4 has been filed in Court today and the same is taken on record. Copy has been furnished to counsel opposite.

Instant writ petition raises specific allegations against respondent No. 6 who was serving as Superintendent in Office of Deputy Commissioner, Jind as regards misusing his official position and affixing his signatures upon orders pertaining to issuance of Arms Licenses and allowing resale of Arms.

In the reply, Rule 4 of the Arms Rules, 1962, has been extracted and the proviso to such Rules contains a mandate that licenses granted or renewed by the licensing authority may be signed by such officer subordinate to that authority as may be specially empowered in this behalf by State Government.

On a specific query having been put, learned State counsel and counsel representing respondent No. 6 concede that no order has been passed empowering respondent No. 6 to sign the orders in question as per procedure and mandate of Rule 4 of the 1962 Rules. Only justification offered is that even in the past, same practice was being adopted and that there was no mala fide intention on the part of the respondent No. 6 while affixing his signatures on the orders.

Suffice it to observe that in law, when a procedure has been laid down under statutory provisions then the particular Act has to be performed only as per the procedure under the Rule and not by resorting to any other method. Even if past practice had continued in

derogation of Rule 4 of the 1962 Rules, the same cannot be permitted to be carried in perpetuity.

Learned State counsel prays for four weeks time to take necessary remedial steps to rectify such state of affairs.

List on 20.02.2019.”

In compliance of the order dated 15.1.2019, respondent No.4 – Deputy Commissioner, Jind passed a speaking order dated 25.3.2019 (Annexure R-1), which reads as under:-

“In compliance the order passed by the Hon'ble Punjab and Haryana High Court, Chandigarh on 15-01-2019 in CWP-26634 of 2018 titled as Jaikishan versus State of Haryana and others and, as per provision laid down in rule of 4 of the Arms authority may be signed by such officer subordinate to that authority as may be specially empowered by the State Government, and

As per Haryana Government Home Department Notification no. 3/88/93-SHG-III dated 10-10-2006, which empowers only City Magistrate or Additional Deputy Commissioner in all the Districts to sign licenses on behalf of District Magistrate who is the Licensing Authority; except these officers, as notified by the State Government none of the other officer/ official is empowered in this regard.

Therefore it is ordered that the afore- said instructions be complied with in letter and spirit. If any official of this office is found to be unauthorized signing or licenses without approval or authorization strict action will be initiated.

Also till further orders, City Magistrate, Jind is authorized to sign the Arms Licenses (New of Renewal)

on behalf of District Magistrate, Jind only after approval of the District Magistrate on file noting.”

As per the reply filed by the State, all 17 licences as against the assertion of the petitioner that 18 licences were found to be issued without stamp and signatures of the District Magistrate and all such licences have been recalled.

Learned counsel for the State further informs that as regard action against respondent No.6, a fresh enquiry has been initiated and the same will be completed expeditiously.

Considering the above, this Court feels that the intended purpose of filing the present petition stands achieved, therefore, no further action is warranted.

However, the learned State counsel is directed to ensure that arms licences are not issued in the State without due approval and the seal and signature of the competent authority.

Copy of this judgment be sent to the office of Chief Secretary, Haryana for necessary compliance.

22.5.2019
gsv

[JITENDRA CHAUHAN]
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No