

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

201

CWP No.5724 of 2021
DATE OF DECISION : 3rd AUGUST, 2021

Brijesh Kumar

.... **Petitioner**

Versus

State of Haryana & others

.... **Respondents**

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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In virtual Court
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Present : Mr. Sanjay Vashisth, Advocate for the petitioner.
Mr. Harish Rathee, Deputy Advocate General, Haryana.
Mr. Kamal Chaudhary, Advocate for respondent No.4.

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RAJBIR SEHRAWAT, J. (Oral)

1. This is a petition filed under Articles 226/227 of the Constitution of India seeking issuance of writ in the nature of certiorari for quashing the order dated 13.02.2019 (Annexure P13) passed by respondent No.3, whereby the arms license No.44-FBD-AUG-2009 and renewal No.519-R/ JCP-FBD./2012 (Annexure P-1), belonging to the petitioner has been cancelled, along with certain other prayers.

2. The case, as pleaded in the petition and as argued by the counsel for the petitioner, is that the petitioner is possessing arms license No.44-FBD-AUG-2009 and its renewal number is 519-R/ JCP-FBD./2012. The license of the petitioner was renewed from time to time. Ultimate renewal of the license of the petitioner is up to 10.08.2021. However, the

license of the petitioner has now been cancelled by the respondents. It is submitted by the counsel for the petitioner, and has been so pleaded in the writ petition as well, that the petitioner was alleged to be involved in three cases. The cases, basically, pertained to property disputes. The first FIR in this regard was registered as FIR No.563 dated 11.10.2015 under Sections 409, 420, 467, 468, 471 & 120-B IPC and PC Act at Police Station Central Fridabad. Another FIR No.727 dated 16.07.2018 was registered under Sections 147, 149, 186, 225, 323, 332, 353 & 511 IPC. Thereafter; still another FIR No.51 dated 24.01.2019 was registered under Sections 406, 420, 467, 468, 471, 506 & 120-B IPC. The last FIR No.51 dated 24.01.2019 was registered at the instance of respondent No.4, with whom the petitioner is having specific property dispute. However, even before getting the FIR registered against the petitioner, the respondent No.4 had made a complaint to the police claiming therein that the petitioner could use his weapon against him and therefore, the arms license of the petitioner be cancelled. Upon such complaint, the competent authority had requisitioned a report from the local police. The Police reported registration of the cases against the petitioner. Thereafter, the petitioner was served with a show-cause notice for cancellation of his arms license. The petitioner did file reply to the said notice and explained before the authorities that the matters involved in the cases, were, basically, the property disputes. It was further clarified that in none of the incidents the use of weapon of the petitioner was involved. Hence, while submitting that there was no basis for cancellation of the arms license, it was prayed that the show-cause notice be filed and the license of the petitioner be not cancelled. However, the authority passed a totally innocuous order and cancelled the license of the petitioner. The

petitioner preferred the statutory appeal. However, even the said appeal has been dismissed by the authority.

3. While arguing the case, the counsel for the petitioner has submitted that in FIR No.563 dated 11.10.2015, only a property dispute is involved. The petitioner is already on anticipatory bail in that case. There is not even an allegation against the petitioner that the petitioner ever used any weapon in the incident involved in the above said FIR. So far as the FIR No.727 dated 16.07.2018, is concerned, it has been pointed out by the counsel for the petitioner that during the investigation, the police themselves have found the petitioner to be innocent and the final report before the Magistrate has already been filed in this regard, which contains the stipulation that the petitioner has been found to be innocent in that case. So far as the last FIR No.51 dated 24.01.2019, is concerned, it is submitted by the counsel for the petitioner that even this FIR was purely a property dispute with respondent No.4. The FIR was got registered just to misuse the process of the law and to put an unnecessary pressure on the petitioner. However, even in that case the petitioner was released on anticipatory bail. Ultimately, respondent No.4 effected a compromise with the petitioner. As a result, the FIR has even been quashed by this court vide order dated 18.11.2019. Not only this, the respondent No.4, whose complaint had led to initiation of the proceedings of the cancellation of the arms license of the petitioner, had submitted affidavit to the competent authority for withdrawal of his complaint qua cancellation of the arms license of the petitioner. However, the authorities have gone ahead with the unsubstantiated complaint and have cancelled the arms license of the petitioner. The counsel has further submitted that mere registration of the FIR is not even a ground

for cancellation of the arms license under the provisions of the Arms Act (in short, the Act) and the Rules framed there under. The counsel has relied upon two judgments rendered by this Court in the cases of ***Balwinder Singh versus State of Punjab and others, 2019(4) RCR (Criminal) 960*** and ***Sadhu Singh versus State of Punjab and others, 2018(4) RCR (Criminal) 567*** and two judgments passed by Allahabad High Court in the cases of ***Awadhesh Kumar Pandey versus Commissioner, Lucknow Division Lucknow and another, 2011(3) RCR (Criminal) 458*** and ***Satish Singh versus District Magistrate, Sultanpur and others, 2009 (18) RCR (Civil) 859***.

The counsel has also submitted that since the weapon was not even alleged to be used in any of the FIR, therefore, there was nothing with the authorities to come to the conclusion that the cancellation of the arms license of the petitioner was required for security of public peace or for the public safety. Hence, the orders have been passed without application of the mind. The authorities have gone totally in a mechanical manner by cancelling the arms license of the petitioner; just on the fact that some FIRs were registered against the petitioner.

4. On the other hand, the counsel for the State, being assisted by the counsel for respondent No.4, while referring to the pleadings filed by the respondents, has submitted that there were specific complaints against the petitioner. The petitioner was facing, at least, two FIRs at the time when the notice for cancellation of his arms license was served upon him. Even the third FIR had come into being at the instance of respondent No.4, who had earlier prayed for cancellation of the arms license of the petitioner. Since the petitioner was involved in three criminal cases, therefore, the petitioner has been rendered such a social character who cannot anymore be

reasonably believed qua not disturbing the public peace and public safety, if the weapon and ammunition is left with him. The authorities have rightly passed the order. Even the statutory appeal filed by the petitioner has been dismissed. The High Court is not expected to act as a court of appeal against the findings of facts and the independent decisions arrived at by the authorities as the statutory functionaries. Hence, this court should not interfere with the order. The writ petition deserves to be dismissed.

5. Having heard the counsel for the parties, this court finds substance in the argument of the counsel for the petitioner. The respondent-authorities are acting as a statutory authority under the provisions of the Arms Act. The cancellation, suspension and revocation of the arms license is dealt with by specific statutory provisions as contained in Section 17 of the Arms Act. The relevant provisions of the Act are as given hereunder:

“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 period as 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 convicting 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 statutory authorities are expected to stick to the above provisions of the Act for taking an action for revocation or suspension of an arms license.

6. A perusal of the provisions of Section 17 of the Act shows that the license of the licensee can be revoked, *inter alia*, for violation of the terms and conditions of the license or if it is found that he has suppressed any material at the time of obtaining of the arms license. None of these situations is involved in the present case. Beside this, revocation of the license can be resorted to under Section 17 Sub-Section 3 (a) and (b) of the Act. These provisions provide for suspension or revocation of the arms license if holder of the license is prohibited by some law from possessing the

arms or he becomes of unsound mind or is rendered unfit for a license as per the provisions of the Act. More discretionary provision, however, is contained in Clause (b) of the above said Section 17(3) of the Act which provides for revocation of the arms license if the authority deems it necessary for security or public peace or for public safety. As per the claim of the State, the provision of Section 17(3)(b) of the Act has been invoked in the preset case.

7. A perusal of the original order of the revocation of the arms license shows that the competent authority was not even provided the correct facts by the police at the time when it was required to arrive at decision whether or not to revoke the arms license of the petitioner. The order itself says that report of the police was to the effect that the weapon of the petitioner was involved in the incident mentioned in the FIRs. However, this is factually incorrect. None of the FIRs alleged against the petitioner involve any offence qua use of the fire arm. Not even a Section regarding any injury is involved in either of these FIRs, except in the FIR No.727 dated 16.07.2018 where only Section 323 IPC is involved. However, as per the record, the petitioner has been declared innocent in this FIR by police themselves; on the ground that the petitioner was not even found present at the spot at the time of incident involved in this FIR. Hence, order of the competent authority is based on incorrect report of the police.

8. Although, it is not even disputed by the petitioner that he had been involved in three cases. However, mere registration of a FIR is not having any legal significance for any purpose except for investigation of the crime involved in that FIR. No adverse order can be envisaged or passed against a person against whom FIR is registered unless specifically required

by any law or by a criminal court. Mere registration of FIR; by its nature; is only a first information regarding the alleged crime. This fact has to be treated only as a first information of a crime, which would not carry with it the character of a statutory factor which can influence the right of the petitioner to hold a weapon. This aspect is made clear by reading of provisions of Section 17(7) of the Act. Under this provision even the criminal court, which is the ultimate authority to deal with the FIR, has been given power to suspend or revoke the license of a person only if he is involved in an offence under Arms Act and is also convicted for the same by the court. Before conviction, even for the offences under the Arms Act, even the court cannot order suspension or revocation of licence. There is a further rider also; that if conviction is set aside on appeal then the order of suspension or revocation of licence shall become void. So; if even a court cannot order revocation of licence only on registration of an FIR against the licensee, there is no question of any statutory authority revoking a licence only because of registration of FIR. Hence, registration of the FIR in itself, is totally irrelevant for the purpose of arriving at decision as to whether the license is to be suspended or revoked or not. Thus, this court finds the reliance of the counsel for the petitioner on the judgments mentioned above to be well placed.

9. Even if the FIR is to be taken to have some kind of relevance with this aspect of revocation of Arms licence; that would be only to the extent that the incident mentioned in the FIR may contain the factors which may lead the competent authority towards thinking that there is a reasonable apprehension of breach of public peace or of public safety. That would depend upon the facts of each case and not on the factum of the mere

registration of the FIR. The competent authority shall have to arrive at an independent decision as to whether the incident and the facts involved in a particular FIR, are of such nature which can, predominantly, lead the licensee to proceed further with disturbance of public peace or public safety. Otherwise the terms 'public peace' and 'public safety' are well defined. The Supreme Court has reiterated in case of Writ Petition (Crl.) No.154 of 2020 decided on 03.06.2021, Vinod Dua versus Union of India and others, that the terms public peace and public safety are synonymous with the terms public order as used in Article 19(2) of the Constitution of India and would, therefore, include only those acts and conduct which has the tendency to incite violence in others, in general, or in any section of society. However, it is different from mere public inconvenience, annoyance or unrest. Hence it is clear that for treating an act or conduct as threat to public peace or public safety such an act has to be such which has the effect of instigating others to resort to violence or create a surcharged environment making different groups of population to stand against each other in the position of immediate collision. Mere act or conduct affecting two specified persons or sides in their inter-se dispute cannot be taken as an act endangering public peace or public safety. Therefore, a dispute between two persons, in absence of any further dimension, is not sufficient to presume the existence of apprehension of breach of public peace or public safety. So far as, the incidents involved in the FIRs, are concerned, as is mentioned above, none of the FIRs mentioned in the present case involve the facts having to do anything with the breach of public peace or public safety. The FIRs involved the offences relating to fraud and forgery etc. between two persons;

which has nothing to do with the arms license as such, or even with public in general.

10. Another interesting aspect of the case is that the process to cancel the license was initiated at the instance of respondent No.4, who would be having his personal interest against the petitioner, being involved in a property dispute. Surprisingly the private grievance of respondent No.4 was made basis for defeating the statutory licence of the petitioner. This approach of the authorities is liable to be deprecated. In any case; it has come on record that the FIR lodged by the respondent No.4 now stands even quashed. Moreover, the said person has already submitted his affidavit that he no more has any threat from the petitioner and that he withdraws his complaint; made earlier for cancellation of the arms license of the petitioner. These facts were duly present with the appellate authority. Hence, even by that standard, authorities were not left with any reason to cancel or to continue revocation of the license of the petitioner.

11. A perusal of the order also shows that the authority have gone totally in a mechanical manner without recording any genuine reason as to how the public peace and public safety was endangered by possession of arms license and the weapon by the petitioner. Section 17(5) enjoins a statutory duty upon the competent authority to record reasons in writing for revoking a licence. The reasons so recorded have to indicate, logically, as to how the facts present before the competent authority, as contained in the FIR or otherwise, would lead to breach of public peace or endanger public safety. The reasons mentioned in the order has to satisfy the test of deductive logic and connect the factual premise to the conclusion qua breach of peace or danger to the public safety. In the present case except mentioning the FIRs

against the petitioner, there is no independent application of mind qua logical deduction of the result being the necessary breach of public peace; or the public safety being in danger.

12. In view of the above, finding the orders Anenxures P-13 and 18 passed by the authorities to be not in conformity with the provisions of the statute, the same are set aside. The writ petition is allowed.

3rd AUGUST, 2021
'raj'

(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>