

207 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-4556-2021 (O&M)

Date of decision: 12th April, 2023

Netra Pal Tongar

...Petitioner

Versus

Commissioner, Faridabad Division and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Ms. Jasneet Mehra, Advocate for
Mr. Amrainder Singh, Advocate for the petitioner.

Mr. Sharad Aggarwal, Assistant Advocate General, Haryana.

AVNEESH JHINGAN, J (Oral):

1. This writ petition in the nature of *Certiorari* is filed seeking quashing of orders dated 5th March, 2018 and 13th March, 2019 cancelling the arms licence of the petitioner and dismissing the appeal respectively.

2. The brief facts are that petitioner held a Arms Licence No. 125-N/JCP-FBD/2014 which was issued on 8th November, 2014 by Licensing Authority, Faridabad. The licence was valid till 7th November, 2017. Application for renewal of the licence was rejected on 5th March, 2018. The licence was cancelled on the ground that petitioner was involved in three FIRs. The appeal against the order of cancellation was dismissed on 13th March, 2019.

3. Learned counsel for the petitioner submits that in the order of cancellation it was noted that the petitioner was acquitted in all the FIRs yet the licence has been cancelled.

4. Learned State counsel defends the impugned orders.

Section 17 of the Arms Act, 1959 (for short 'the Act') deals

with suspension or revocation of licence.

'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.

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6. Licensing authority under Section 17 (1) may vary the conditions on which the licence was granted except the prescribed conditions and for doing so notice can be issued to the licence holder to deliver up the licence within the stipulated time. As per sub-section (2) of Section 17 of the Act, the conditions of the licence can be varied on application from the licence holder.

7. Sub-section (3) stipulates eventualities in Clauses (a) to (e) for suspending or revoking the licence.

(a) If there is prohibition under this Act or any other law for acquiring or possessing the arms and ammunition or licence holder is of unsound mind or unfit for any other reason.

(b) If it is necessary for security of public peace or public safety.

(c) Where licence was obtained by suppression of material information or if information provided was wrong.

(d) For contravention of the conditions of licence.

(e) Failure to comply with the notice under Section 17(1) of the Act.

8. Under sub section 4 licence can be revoked on application of the licence holder. Sub-section (5) makes it obligatory for the licensing authority to record reasons in writing while varying the conditions of suspending or revoking the licence. The reasons are to be furnished to licence holder on demand, the exception being in case licensing authority is of opinion that it will not be in public interest to furnish such reasons.

9. Section 17(3) (b) of the Act bestows the wide power on the licensing authority for varying the terms and conditions, revoking or cancelling the licence. The requirement is of authority being satisfied that

grant or renewal of licence would not be against the public security, public peace or public safety. There cannot be a quarrel on the proposition that this discretion has to be exercised judiciously.

10. The law is well settled that conclusion arrived at by quasi judicial authority must be supported by reasons and these should be communicated to the affected parties. The Supreme Court in M/ s Kranti Associates Pvt. Ltd. & another v. Sh. Masood Ahmed Khan and others, 2010(9) SCC 496, after considering the law on the issue summed up as under:

51. Summarising the above discussion, this Court holds:

a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

b. A quasi-judicial authority must record reasons in support of its conclusions.

c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of

reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya v. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the

decision is of the essence and is virtually a part of "Due Process".

11. From the perusal of the impugned order, it is forthcoming that only ground taken for cancellation of licence is that the petitioner was involved in three criminal cases. It would be apposite to mention that respondent had noted that petitioner was acquitted in all the cases. No reasons were recorded to bring the case within ambit of Section 17(3) of the Act and impugned order is violative of Section 17(5) of the Act. The order of cancellation is non-speaking. The reply filed by the petitioner was brushed aside by simply stating that defence taken was not satisfactory. The impugned orders are set aside. The petition is disposed of by remitting the matter to respondent No.2 to consider it afresh in accordance with law keeping in view the provisions of Section 17(3) of the Act.

12. Petitioner is directed to appear before respondent No. 2 on 25th April, 2023 at 11:00 AM.

[AVNEESH JHINGAN]
JUDGE

12th April, 2023
Parveen Sharma

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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |