
(1998) 10 J&K CK 0010
In the Jammu And Kashmir High Court
Case No : O.W. P. No. 339/1998

Abdul Aziz

APPELLANT

Vs

State of Jammu & Kashmir

RESPONDENT

Date of Decision : 20-10-1998

Acts Referred:

Army Act, 1950 — Section 17

Citation : (1999) KashLJ 678

Hon'ble Judges : Arun Kumar Goel, J

Bench : Single Bench

Advocate : Sunil Sethi, Hafiz-ul-Rehman, Advocates appearing for the Parties

Judgement

1. Petitioner is a holder of licence issued under the Arms Act (hereinafter to be referred as Act) as well as Rules framed there under (hereinafter to be referred as Rules). Record shows that petitioner is holding his licence since long and had been getting the same renewed from time to time on deposit of requisite fee from the competent authority as envisaged under the Act and the Rules framed there under. Annexure ""A"" attached to the

writ petition indicates that the petitioner was permitted:

to repair all types of N. P. Bore Fire Arms;

to sell and keep for sale :

(i) SBBL 12 Bore Short Guns 200 (Two Hundred)

(ii) DBBL 12 Bore Short Guns 100 (One Hundred)

(iii) SBML50 (Fifty)

(iv) DBML50 (Fifty)

W N. P. Bore Rifles 50 (Fifty)

(vi) N. P. Bore Revolver 50 (Fifty)

(vii) N. P. Bore Pistol 50 (Fifty).

2. Similarly the petitioner was authorized by this licence following quantity of ammunition which he could sell or keep for sale :

(i) 12Bore Cartridges 30,000

(Thirty Thousands)

(ii) N. P. Bore Rifle Cartridges

10,000 (Ten Thousands)

(iii) Pistol/Revolver Cartridges

10,000 (Ten Thousands)

(iv) Percussion Caps 20,000

(Twenty Thousands)

(v) Gun Powder 50 KG (Fifty KG)

Annexure ""A"" as well as the original file produced by Shri Rehman shows that the licence of the petitioner was being renewed from year to year by

the competent authority forgetting the above said quantity of arms and ammunition, as detailed in the said licence, till the year ending of 31st

December, 1997.

Here it may be appropriate to notice few provisions of Arms Act as well as the Rules framed there under. Section 5 deals with the licence for

manufacture, sale etc. of Arms and Ammunition. This provision is contained in Chapter II of the Act. In accordance with the provisions of Section

13 of the Act, on receipt of an application for the grant of licence under Chapter II, licence is granted after such an application had been processed

by the competent authority in Form No: XII of Schedule III of the Arms Rules 1962. The conditions, subject to which licence to deal in arms and

ammunition is renewed, are contained in Form XII itself.

Section 15 of the Act deals with the duration of licence and its renewal. No doubt under this Section life of a licence, unless revoked earlier, is

three years from the date of which it is granted, still under the Proviso to Section 15(1) of the Act it can be granted for a shorter period and unless

it is revoked earlier, it continues to remain in force for such period from the date of which it is granted as the licensing authority may in each case

determine.

6. Under Section 15(3) of the Act, a licence is entitled to get the licence renewed, unless the licensing authority for reasons to be recorded in

writing otherwise decides. For ready reference Section 15 of the Act is reproduced herein below:

15. Duration and renewal of licence. (1) A licence under Sec.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.

A licence under any other provision of Chapter II shall, unless revoked earlier, continue in force for such period from the date on which it is granted

as the licensing authority may in each case determine.

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 Secs. 13 and 14 shall apply

to the renewal of a licence as they apply to the grant thereof.

7. Licensing Authority has further the authority to vary the conditions of the licence subject to which it has been granted, and for that purpose it had

to ask the licence holder by a notice in writing to deliver the licence to it within such time as may be specified in the notice. However on an

application of the licence holder the licensing authority is competent to vary the conditions of licence. This provision further authorises the licensing

authority to suspend a licence for such period as it may think fit by an order in writing. Section 17 of the Act, to which a reference is going to be

made hereinafter, is also reproduced herein below:

17. Variation suspension and revocation of licenses. (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 licenceholder by notice in writing to deliver up the

licence to it within such time as may be specified in the notice.

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.

The licensing authority may by order in writing suspend a licence for such period as it thinks fit or revoke as 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

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

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

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 subsection (1) requiring him to deliver up the licence.

The licensing authority may also revoke a licence on the application of the holder thereof.

Where the licensing authority makes an order varying a licence under subsection (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.

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

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.

An order of suspension or revocation under subsection (7) may also be made by

an Appellate Court or by the High Court when exercising its powers of revision.

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 licence 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.

Rule 53 of the Arms Rules deals with the variation of conditions of licence. On the basis of aforesaid provisions governing the renewal of licence,

the petitioner admittedly applied for the renewal of his licence issued to him by the competent authority vide Annexure ""A"" around 31st October,

97 praying therein to renew the licence in question for the period 1st January, 1998 to 31st December, 1998.

On the directions of the Court, Shri Rehman has produced the original file relating to the application for renewal of his licence for perusal of the

court. From the record it is clear that there is no report adverse against the petitioner to demonstrate that while working as a dealer of arms and

ammunition he conducted his business in a manner prejudicial to the interest of State. Rather, there are clear cut recommendations made by the

District Administration i.e. the District Magistrate as well as Senior Superintendent of Police, Jammu, when latter had categorically stated that local

police have no objection if the licence of the firm is renewed for the year 1998, and before observing so the Senior Superintendent of Police,

Jammu had asked for the report of Station House Officer, Police Station Pacca Danga, Jammu.

Shri Sethi, learned counsel appearing for the petitioner submitted that there is no authority vested with the respondents to reduce the quota either

under the provisions of the Act or the Rules framed there under, and the action of respondents is in violation of Section 17 of the Act. It was

further submitted by Shri Sethi that the action of respondents in reducing the quota of the petitioner is arbitrary as well as discriminatory. In support

of this plea it was pointed out by Shri Sethi that two other similarly situated licence holders, to whom licenses vide Annexure ""B"" & ""C"" to the writ

petition had been issued and whose sales according to Shri Sethi were also on the lower side, have been allowed the same quantity of arms and

ammunition as held by them prior to 1.1.1998. Thus according to Shri Sethi there is no legitimate ground disclosed to the petitioner which

authorises and or enables the competent authority to reduce the quota of arms and ammunition for the relevant year, as detailed in the licence.

11. Here it may be appropriate to notice that against the quota of arms and ammunition, which the petitioner could sell or keeps for sale, has been

reduced while renewing licence for the period 1st January, 1998 to 31st December'98 and the quantity allowed is as under:

S/DBBL Guns 100 each

S/DBML10each

Pistol/Revolver 10 each

12Bore Cartridges 10,000 numbers.

Rifle Cartridges 1000 numbers

Pistol/Revolver Cartridges 1000 numbers

Percussion Caps 1000 numbers

Gun Powder 10 KG

12. It is this order of substantial reduction which has been questioned by the petitioner in this writ petition and it has been prayed that respondents

may be directed to renew the licence in question for the period 1st January, 1998 to 31st December, 1998, permitting the petitioner to sell as well

as keep for sale the quantity of arms and ammunition, as detailed hereinabove in this judgement.

Shri Rehman, learned Government Advocate submitted that the quantity of arms and ammunition was reduced while renewing the licence of the

petitioner for the relevant period Keeping in view the sales thereof in the immediate preceding year ending on 31st December, 1997, Similarly with

reference to Sections 17 & 18 of the Act, Shri Rehman made an attempt to justify the reduction in the quota of arms and ammunition while

renewing the licence by the competent authority. Another argument addressed was that permitting the quantity of arms and ammunition vide

Annexure ""A"" is also a condition of licence, as such it was within the competence of authority concerned to have reduced the same.

As already observed and found out from the record, which position Mr. Rehman very fairly stated that District Authorities (Civil) as well as police

had recommended the renewal of licence as applied for by the petitioner. Record of the case also does not support the plea of respondents that

the petitioner was unable to sell the requisite quantity of the arms as well as ammunition. If a reference is made to the balance as detailed in the

official file produced as on 31st December, 1997, this plea has been raised simply to be rejected.

Another contention raised by Shri Rehman was that petitioner should have approached the appellate authority provided under the Act and in this

behalf reference was made to the provisions of Section 18 of the Arms Act. This argument has been raised simply to be rejected in the face of

proviso to Section 18(1) of the Act. Reason being that order in the instant case has been passed by the Government and not by any other

authority, as such there no merit in this plea.

Another plea raised in support of this writ petition by the learned counsel appearing for petitioner is that similarly situate persons are being treated

dissimilarity. In this behalf a reference is made to the pleadings in paragraphs 9 to 12 of the writ petition. An omnibus and general reply has been

given in these paras of the writ petition in the reply filed by the respondents without specifically denying the statement of facts detailed in these

paras of the writ petition. Reply filed by the respondents cannot be termed even remotely to be a denial in the eyes of law. For ready reference

paras 9 to 12 of the writ petition together with their reply are reproduced herein below:

9. That the reduction of quota of Arms and Ammunition of the petitioner is bad in the eyes of law as no opportunity of being heard was given to

the petitioner before taking steps.

That no allegations have been communication to the petitioner, which may have implied the respondent¹ to take action for reducing the quota of

the petitioner.

That the respondents are also not justified in reducing the quota of Arms and Ammunition in favour of the petitioner, as in the current year about 50

fresh licenses have been issued by the government and when the government is granting fresh licenses, as such, there is no question or any

justification with the respondents for reducing the quota of the petitioner, without any fault committed by the petitioner.

Those similarly situated dealers in the line have been granted renewal in routing matter. The case of M/S Quality Gun House and M/S Jammu

Armoury are quoted here, in whose case the renewal has been accorded on original quota, and the copies of their licenses are annexed herewith

and marked as Annexures P2 and P3 respectively. The aforesaid fact clearly shows that discriminatory treatment has been meted out to the

petitioner when the Arms licenses have been renewed/extended in other cases as per original quota allotted to them i.e. on the original sanctioned

strength.

Reply of the respondents to these paras is as under:

91011) In reply to paras 9 to 11 it is submitted that the reduction in quota of the petitioner is not done with any malafide intention and is directly

linked with the annual sale of the petitioner's concern.

12. In reply to para 12 it is submitted that the Respondent No.1 has in no way discriminated the petitioner; the example of Quality Gun House

quoted by the petitioner itself clears the position, as the petitioner is the proprietor of M/S Quality Gun House. In case the respondent would have

any malafide intention against the petitioner, the quota in this case would have also been reduced. Another rational or object in the reduction of the

quota of the petitioner's concern is the sale statement of the previous year, perusal of which, clearly evidences that a substantial portion of

approved quota has remained unsold for the reasons known to the petitioner. It was in this background that reasonable reduction has been

bearing with the sale statement of previous years has been effected.

17 So far the plea of petitioner being owner of M/S Quality Gun House is concerned, it is without any basis from record. When confronted with

this situation as well as licence issued by the competent authority in favour of said concern (Annexure "C" to the writ petition), Shri Rehman fairly

stated that from this document it is clear that petitioner has nothing to do anything directly, indirectly, or remotely with the said concern i.e. M/S

Quality Gun House, although he persisted that in the communications since telephone number of petitioner's concern and that of the Quality Gun

House is same, therefore this court should return a finding as pleaded by the

respondents. Merely using the same telephone number will not convert the licence from the licenses of Annexure "C" to the petitioner. The stand of respondents as such deserves to be rejected in this behalf and it is ordered accordingly

From the narration of above facts it is clear that the action of the respondents in reducing the quantity of arms and ammunition as also deleting

certain items for the period 1st January, 1998 to 31st December, 1998 cannot be sustained either in the facts, circumstances and background of

the present case or in law. In addition to this action of the respondents is also arbitrary, besides being discriminatory for the reasons set out

hereinabove. Even from record the action of the respondents is not sustainable. Consequently this writ petition deserves to be allowed and it is ordered accordingly.

As a result of the petition having been allowed it is directed that the concerned respondent shall renew the licence or petitioner for the period 1st

January, 1998 to 31st December 1998 for the same quantity of arms and ammunition as held by the petitioner originally, within two weeks from

today so that the petitioner is in a position to avail the quota of current year. It is further directed that since time is short, application for renewal of

licence for the period 1st January 1999 to 31st December, 1999 shall be entertained and considered by the respondents on the basis of original

quantity of arms and ammunition for its renewal, as and when it is filed.

20. No costs.

C. M. P. No: 461/98

21. No orders in view of the orders passed in the main petition.