

(1989) 11 MP CK 0035

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1772 of 1989

Amrik Chand Saluja

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 07-11-1989

Acts Referred:

Arms Act, 1959 — Section 13, 13(2A), 14, 14(1), 15
Arms Rules, 1962 — Rule 46, 46(1)

Citation : (1991) CriLJ 1314 : (1990) ILR (MP) 149

Hon'ble Judges : D.M. Dharmadhikari, J;B.C. Verma, J

Bench : Division Bench

Advocate : R.C. Khare, for the Appellant; Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

B.C. Varma, J.—The petitioner then applied for its renewal, vide Annexures-B, D and F for the years 1987, 1988 and 1989 respectively. These applications were not disposed of. However, the petitioner went on depositing in the treasury the necessary licence fee. Although no formal orders, renewing the licence for the years 1987, 1988 and 1989, were passed, yet, from time to time, the District Magistrate, Bilaspur, issued no objection certificates for import of fire arms and ammunition, as and when required. Annexures-I-1 to I-10, annexed to the petition, are a few of such no objection certificates, which range from 3-1-1987 to 12-9-1988. The petitioner was allowed to continue the business of dealing in arms and ammunition, as before. However, on 21-1-1988, the arms and ammunition held by the petitioner in his premises were seized by the Kotwali Police and were removed to the Police Station. The seizure memo is Annexure-A. The petitioner alleges that the arms so seized also include fire arms, which had come to the petitioner's establishment for repairs and did not belong to him. The petitioner immediately approached the District Magistrate vide application dated 28-1-1989 (Annexure-K) and requested for a copy of the order, directing the aforesaid seizure. This was replied to by the District Magistrate vide his

memorandum dated 6-2-1989 (Annexure R--III filed with the return). This indicates that action to effect seizure of arms and ammunition, as aforesaid, was taken in obedience of certain orders passed by the State Government in its Home Department. The petitioner was directed to contact the Home Department of the State to obtain copy of such orders. It is significant to mention here that this communication (Annexure R-III) is conspicuously silent about any order passed prior to that date, i.e., prior to 6-2-1989, rejecting the petitioner's prayer for renewal of the licence. The petitioner then immediately approached this Court through this petition on 9-2-1989. Notice of this petition was issued, in response to which return with documents, has been filed. It is in this return that the respondents, for the first time, disclosed that the petitioner's application/applications for renewal of the licence have been rejected vide order dated 19-1-89. A copy of that order has been annexed to the return as Annexure R-I. The petition was consequently amended to challenge this order as well.

2. After hearing learned counsel for the petitioner as also the Government Advocate, we are of opinion that this petition must be allowed and the seizure and the order rejecting the petitioner's application for renewal of the licence deserve to be quashed. Section 3, which falls under Chapter II of the Arms Act, 1959, forbids any person to acquire or have possession of or carry any fire arms of ammunition, without a valid licence issued in accordance with the provisions of the Act and the rules made thereunder. Any person, desiring to obtain such a licence is required to make an application u/s 13 of the Arms Act to the licensing authority, in such form, containing such particulars and accompanying such fee, as may be prescribed. On receipt of such an application, the licensing authority is required to call for a report of the officer-in-charge of the nearest police Station on that application. The licensing authority then shall consider this report and after such enquiry as it may consider necessary and subject to other provisions of Chapter III of the Act, may, by order in writing, either grant a licence or refuse to grant the same. The proviso to Sub-section (2-A) of Section 13 permits the licensing authority to proceed to make order Under Sub-section (2-A) of Section 13, either granting or refusing to grant licence, even if no report is received from the officer-in-charge of the nearest police station within the prescribed time. Section 14 of the Act provides that the licensing authority shall refuse to grant licence notwithstanding anything contained in Section 13, under certain circumstances mentioned in Clauses (a) and (b) of Sub-section (1) of Section 14. Section 15 provides for duration and renewal of licence and says that a licence u/s 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 short period. Sub-section (3) of Section 15 makes provision for renewal of the licence and for that purpose makes the provisions of Sections 13 and 14 applicable, as they apply to grant of licence.

3. The position that emerges from the aforesaid provisions of the Arms Act is that a person cannot hold any arms or ammunition without a licence. This licence is granted for certain duration and under certain conditions. It shall be refused under any of the circumstances mentioned in Section 14. One of such circumstances mentioned u/s 14(1)(b)(ii) is where the licensing authority deems it necessary for the security of the public peace or for the public safety to refuse to grant such licence. Ordinarily, a licence shall be renewable. If, however, the licensing authority decides not to renew the licence, it has to record its reasons in writing for so doing. As the provisions of Sections 13 and 14 have been made applicable to an application for renewal of a licence in the same manner as they apply for grant of a licence, the licensing authority is required to obtain a report of the officer-in-charge of the nearest Police Station and is also required to make such enquiry as may be considered necessary before refusing to renew the licence. One has, therefore, to see in the present case, if, while refusing renewal of licence vide Annexure R-I, the licensing authority has adhered to these provisions.

4. The order (Annexure R-I) dated 19-1-1989, by which the petitioner's application for renewal of the licence has been rejected, is passed by the Joint Secretary, Home Department (Police) of the State of Madhya Pradesh. The only reason recorded in that order for refusing renewal of the licence is the pendency of two criminal cases against the petitioner. Out of these two cases, one is Under Sections 25 and 27 of the Arms Act and was initiated in the year 1985. It is worth mentioning that although the case was instituted in the year 1985, it was not thought fit by the licensing authority to suspend the licence granted to the petitioner and which licence, as we have shown above, was valid up to 31-12-1986. This only shows that the pendency of that case was never taken as an impediment or circumstance adverse to the petitioner for holding a licence. This apart, the documents, Annexures I-1 to I-10, filed with the petition, whereby the District Magistrate, Bilaspur, issued no objection certificates to the petitioner to import certain firearms and ammunition, are again strong indications that the pendency of the case against the petitioner was never taken seriously and despite the pendency of the two criminal cases against the petitioner, he was permitted to continue to hold the arms and ammunitions and deal with them for long three years. We have also perused the challan papers of those cases annexed with the petition. All that they allege against the petitioners is his involvement in obtaining certain arms licences for dealers from one of his relatives in Hyderabad. These licences are said to be fraudulently obtained. The petitioner thus is alleged to be only remotely connected with issuance of the arms licences. Learned Government Advocate, appearing for the respondents, however, submitted at the Bar that renewal of the licence has been refused in terms of Section 14(1)(b)(ii). The order (Annexure R-1), however, does not support this contention. It no-where indicates that renewal has been refused because it was thought necessary for security of the public peace or for public safety. There is not the slightest whisper of such a reason in that order. That

order, therefore, cannot be supported on this count. However, if the power to refuse to grant a licence and consequently its renewal u/s 14 read with Section 15(3) is held in addition to the general power to refuse or grant licence, contained in Sub-section (2-A) of Section 13, then too, we are not satisfied that the renewal of the licence has been refused for any good reason. Instead, as we have indicated above, even the initiation and pendency of two criminal cases against the petitioner is not of much significance and even the respondents never took those cases as a circumstance adverse to the petitioner for holding arms and ammunition. We have shown above and even at the cost of repetition, may say again that even during this period, the District Magistrate had little objection in permitting the petitioner to import arms and ammunition and to continue to hold and deal with them. We would, therefore, hold the action of the respondents in passing the order (Annexure R-1), refusing renewal of the arms licence in favour of the petitioner, as arbitrary and contrary to the provisions of Section 13(2-A), read with Sections 14 and 15(3) of the Act.

5. This now takes us to the question of seizure of the arms. The relevant provision as to search and seizure of arms and ammunition is contained in Section 22 of the Act, which is as follows:--

"22. Search and seizure by Magistrate.--(1) Whenever any Magistrate has reason to believe --

(a) that any person, residing within the local limits of his jurisdiction has in his possession any arms or ammunition for any unlawful purpose; or

(b) that such person cannot be left in the possession of any arms or ammunition without danger to the public peace or safety, the Magistrate may, after having recorded the reason for the belief, cause a search to be made of the house or premises occupied by such person or in which the Magistrate has reason to believe that such arms and ammunition are or is to be found and may have such arms and ammunition, if any, seized and detain the same in safe custody for such period as he thinks necessary, although that person may be entitled by virtue of this Act or any other law for the time being in force to have the same in his possession.

(2) Every search under this section shall be conducted by or in the presence of a Magistrate or by or in the presence of some officer specially empowered in this behalf by the Central Government."

The provisions of Rule 46 of the Arms Rules, 1962, must also be noticed. Clause (a) of Sub-rule (1) of Rule 46, which is relevant for our purposes is as follows:--

"46. Deposit of arms and ammunition u/s 21.-- (1) When a licensing authority decides to suspend or revoke a licence or to refuse to renew it, he shall while communicating his decision in writing to the licensee, inform him that --

(a) u/s 21(1) he is required to deposit within such time as may be specified in the order suspending, revoking or refusing to renew the licence, the arms or

ammunition covered by the licence, either with the officer-in-charge of the nearest police-station or with a dealer holding a licence in Form XIV, or in case he is a member of the armed forces of the Union, in the unit armoury."

According to this rule, the licensing authority, after taking a decision to refuse to renew the licence must communicate the decision in writing to the licensee. Along with this communication of refusal to renew the licence, the licensing authority is further obliged to inform the licensee that in terms of Section 21(1) of the Act, he (licensee) is required to deposit the arms and ammunition covered by the licence, either with the officer-in-charge of the nearest Police Station or with a dealer holding licence in Form XIV, or, in case he is a member of armed forces of the Union, in the unit armoury. Further, the licensing authority has to specify the time during which the arms and ammunition covered by the licence, have to be so deposited. Obviously, nothing of this kind was done in the present case. There appears to be substance in the petitioner's contention that the order refusing to renew the licence was never communicated to the petitioner. We have shown above that the order was passed by the State Government at Bhopal on 19-1-1989. There is nothing in the order to indicate that the same was ever communicated to the petitioner. The letter (Annexure R-1) is addressed to the District Magistrate and a copy of it has been sent to the Commissioner, Bilaspur. It bears no endorsement of communication of that letter/order to the petitioner. There is further no document showing that the petitioner was served with a copy of that letter by the District Magistrate, Bilaspur or by any other authority. It is also clear that as required by Rule 46, the petitioner was never communicated any direction to deposit the arms or ammunition, either with the officer-in-charge of the nearest Police Station or with a dealer holding a licence in Form XIV. That being so, it cannot be said that on 20-1-1989, when the seizure was effected at 10 a.m. the petitioner held arms or ammunition illegally or for any unlawful purpose. There is also nothing to suggest that any Magistrate has recorded reasons for his belief that the petitioner could not be left in possession of the arms and ammunition without danger to public peace or safety. We have not been shown any order of the Magistrate, directing the Police Officers to make a search of the petitioner's house or to effect seizure. Even if we were to assume the existence of any such order by the Magistrate, the record does not show that any of the conditions mentioned in Clause (a) or (b) of Sub-section (1) of Section 22 existed, permitting the Magistrate to effect seizure of arms and ammunition possessed by the petitioner. For the aforesaid reasons, we hold the seizure of the arms, vide Annexure-A as illegal.

6. We allow this petition and quash the seizure of arms and ammunition vide Annexure-A as also the order, Annexure R-1, dated 19-1-1989, whereby the application of the petitioner for renewal of the licence has been rejected. The authorities shall now proceed to consider the application of the petitioner for renewal of licence in accordance with law, expeditiously. There shall be no order as to costs. The security amount, if any, be refunded to the petitioner.